

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

12 CV 01648

JUAN CANDELARIA, 89-T-5069,

Plaintiff,

-against-

THE CORPORATE CITY OF NEW YORK ("NYC") DEPARTMENT  
OF CORRECTION ("DOC") COMMISSIONER MARTIN F. HORN  
("HORN"); NYC POLICE DEPARTMENT ("NYCPD")'S  
PATROL SERVICES BUREAU AND BALLISTIC SQUAD UNITS  
("THE NYPD UNITS"); NYCPD OFFICER JOHN SILVA, SH. #  
2671 ("SILVA"); NYCPD DET. DOMINICK VASATURO, SH. #  
1693 ("VASATURO"); NYCPD SGT. ZULBERTI ("ZULBERTI");  
DOCS CORRECTION OFFICER ARIAS VICTOR, SH. # 9419  
("VICTOR"); NYC SHERIFF DEPARTMENT ("THE SHERIFF")  
NANCY MANGOLD d.b.a. THE UNIFIED COURT SYSTEM  
OF THE CITY/STTE OF NEW YORK ("UCS");  
THE STATE OF NEW YORK ("NYS") SENATE AND ASSEMBLY  
("THE LEGISLATURE"); 55TH GOVERNOR OF THE STATE OF NEW  
YORK d.b.a. THE PEOPLE OF THE STATE OF NEW YORK  
("THE PEOPLE"); CHARLES J. HYNES d.b.a. OFFICE  
OF THE KINGS CO. D.A. ("DA"); NYS DEPARTMENT  
OF CORRECTION ("DOCS") COMMISSIONER BRIAN FISCHER  
("FISCHER") d.b.a. AS DOCS; DOCS SENTENCING  
REVIEW SPECIALIST HELENE C. ANTONELLI  
("ANTONELLI"); NYC A.D.A. DAVID J. HIMMELBERGER  
("HIMMELBERGER"); JEREMY D. SCHWARTZ ("SCHWARTZ");  
DOCS DEPUTY COMMISSIONER/CHIEF MEDICAL OFFICER  
CARL J. KOENINAGSMANN, MD ("KOENINGSMANN");  
GREEN HAVEN CORRECTIONAL FACILITY ("GREEN HAVEN"),  
AND JANES/JONE DOES 1-15 (RN; EMPLOYEES OF THE  
DOCS; SUPERVISORY AND POLICY-MAKING PERSONNEL  
OF THE STATE OF NEW YORK, DOCS, STATE OF  
FLORIDA, AND OF THE CITY OF NEW YORK, AND DOCS'S C -  
Off(s), et al.,

Defendants.

COMPLAINT

Docket No. : \_\_\_\_\_

BENCH TRIAL DEMAND  
Within Ten Days Of  
Service of a  
Final Pleading  
Before A THREE  
ARTICLE III  
COURT PANEL

PRO SE



I-THIS IS A CIVIL RIGHTS COMPLAINT Under 42 U.S.C §§ 1983, 1985, 1986

EXECUTED ON: 11/29/ 2011.  
In The County of Dutchess,  
State of New York

BY: PLAINTIFF JUAN CANDELARIA,  
DIN # 89-T-5069, Green Haven Corr. Fac.,  
Route 216, Stonyville, N.Y. 12582

## I

JURISDICTION IS PROPER UNDER 28 U.S.C. §§ 1331-1332-1343-1367-AND-1651:

1. This action is brought under the CIVIL RIGHTS ACT OF 1871, as codified in 42 U.S.C. §§ 1983, 1985, 1986, et seq.; The Rehabilitation Act of 1973, § 504, as codified in 29 U.S.C. §§ 706, et seq. ("§504"); The Americans with Disabilities Act of 1990, Title III et seq., as codified in 42 U.S.C. §§ 12101, et seq. ("A.D.A." Or "ADA"); The End-Stage Renal Disease ("ESRD") Program underspinning § 1881 of the Social Security Act, as codified in 42 U.S.C. §§ 1395rr, et seq. ("The ESRD Program"); The Interstate Agreement On Detainers Act, Pub. L. No. 91-538, §§ 1-8, 84 Stat. 1397-1403 (1970), as Amended by Pub. L. No. 100-690, tit. VII, § 7059, 102 Stat. 4403 (1988) ("IADA"); New York State Common Statutes, The Rules and Regulations, Common Laws, and the Constitution of the State of Florida and of the State of New York, to protect the rights, privileges and immunities guaranteed to plaintiff by the Commerce and supremacy Clauses and by the First, Fourth, Fifth, Sixth, Eighth, Thirteenth and Fourteenth amendments to the UNITED STATES CONSTITUTION and to preserve the memory of the great deliverance of Israel from death in Egypt during the Tenth Plague, to protect its SEPHARDIC [or not] Descendant from death in the United States and to preserve the COVENANTS that (a):

"YOU SHALL HAVE THE SAME LAW FOR THE STRANGER AND FOR ONE FROM YOUR OWN COUNTRY,"

[Leviticus 24:22 (All-caps formats added)] and (b):

"THE DEFENDANTS, AND EACH OF THEM, HAD ACTED UNDER COLOR OF STATE LAW OR HAVE WILLFULLY AND JOINTLY PARTICIPATED WITH STATE OFFICIALS TO DEPRIVE PLAINTIFF OF HIS CIVIL, STATUTORY, AND CONSTITUTIONAL RIGHTS,"

[see e.g. People ex rel. Battista v. Christian, 249 N.Y. 314, at 319 (N.Y. Ct. App. 1928))] and, in that context, it has been held that (1)

"[A HOSPITAL OR DOCTOR ACTED] UNDER COLOR OF STATE LAW WHEN HE ABUSES THE POSITION GIVEN HIM BY THE STATES,"

[accords, WEST V. ATKINS, 487 U.S. 42, at 50 (1988) ("ATKINS") (underlines, materials in bracket marks and All-Caps Formats added)]

## III

INTRODUCTORY FACTS

4. New York Penal Law § 15.20(1)(a) provides that a person is excepted from criminal liability when the predicate for the commission of criminal activities is based on mistaken belief on the parts of the complainant and, most significantly (a):

"SUCH FACTUAL MISTAKE NEGATIVES THE CULPABLE MENTAL STATE REQUIRED FOR COMMISSION OF AN OFFENSE,"

[accords N.Y. Penal Law § 15.20(1)(a) (underlines and All-caps formats added)] and, equally significantly, "SUCH MISTAKEN BELIEF" can be "FOUNDED UPON, inter alia, "A JUDICIAL DECISION OF A STATE OR FEDERAL COURT" [id., § 15.20(2)-(c)](underlines and All-caps formats added)] and, in regarding thereof, (b) following a Federal Chief United States District Court's finding on 6/24/99, that, in relevant parts, (i):

"THE PETITIONER WAS NOT CHARGED WITH POSSESSION OF THE SECOND WEAPON" [re-printed from Pg. 18 of the Federal court's 33-Pgs. Slip. Op. of 6/24/99 (underlines and All-caps formats added)], (c) the city/State of New York and those acting in concert with them, FOR THE FIRST TIME ON 10/23/07, turned over to Plaintiff's Defense Team [see e.g. Document Bearing Date-Stamped numbers JC0001-JC0161, at JC0001-JC0011] NEWLY DISCOVERED INFORMATION showing that Plaintiff Candelaria has neither been tried nor convicted or ever sentenced for the presumptive "OFFENSES" for which he had been originally indicted under Kings CO. Indictment # 9954/87 [JC0017-JC0018] underspinning the presumptive use of a NEWLY DISCOVERED Serial # 288659LW Colt .38 Two Inch Barrel Caliber revolver which had been imputed to Plaintiff Candelaria by NYPD Officer John Silva, SH. # 2671 as a "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" on 11/9/87, under NYPD Property clerk's Invoice # D12747 [see e.g. Newly discovered document being proffered herein as JC0012-JC0022][hereinafter The First Weapon"].

5. Additional Newly discovered information [see e.g. JC0021-JC0022] documented that Plaintiff Candelaria was admitted to the custody of the Defendant NYC DOC On "11-NOV-87" in "D[etainee] Status and his "TRANSF[ER] DATE: [WAS] "12-FEB-88" under Indictment # 9954/87" and that, upon his February 12, 1988, "DISCHARGE[] FROM: BKYN" [see e.g. Document ### JC0021-JC0022]" he was re-arrested in the State of Florida [see e.g. Document ## JC0152-JC0154], in the STREETS IN [HIS STATE OF] FLORIDA," his was arrested pursuant to the request of the CITY/STATE OF NEW YORK-BROOKLYN THEN EXTRADITED HIM, AND, VIA BROOKLYN EXTRADITING OF THE [PLAINTIFF CANDELARIA], under the theory that the newly discovered Serial # 288659LW Colt .38 Caliber revolver imputed to Plaintiff candelaria on 11/9/87 as a "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" NYPD Officer John Silva, SH. # 2671 had "Vouchered Under Voucher D12747" presumably fired a bullet which ballistically matched the presumptive bullet removed from a NYC Victim's body [see e.g. Document # JC00031-JC0037, for the first time turned over to Plaintiff's defense team on 5/2/ and again on 10/23/07], plaintiff Candelaria returned to the State of New York from his Original State of Florida on 9/4/88 [see e.g. Document # JC0031-JC0037]

6. During the underlying April, 1989 State Petit Jury Trial, during which the City/State of New York introduced, over plaintiff's objection, a different and distinct weapon as People's Exhibits 2A ("THE SECOND WEAPON On Evidence")-Over Plaintiff's Objection, the City-State of New York did not, however, argued the Theory described in ¶¶ 4-6, ante; rather, they argued multiple different and distinct theories of criminal liability neither of which is transactionally related (in law or Fact) to the Newly discovered Serial # 288659LW/Indictment # 9954/87 and-thus-Even accepting arguendo as true the Stories of Plaintiff's accusers Victor/Cesar arias, Plaintiff Candelaria cannot be affected muchless concluded, by evidence, decree, or JUDGE,



JUDGMENT, underspinning the "SECOND WEAPON" introduced in April, 1989 as People's Exhibit 2A and the rounds introduced as People's 2B & 3, on evidence, none of which is rationally connected (in law or fact) to the Newly discovered Serial # 288659LW Colt .38 Two Inch Barrel, Caliber Revolver, which was imputed to Plaintiff candelaria as a "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" [JC0015, JC0033], said to had been loaded with the newly discovered Serial # 288659LW (Four) Colt .38 Caliber rounds, and there were neither forensic testimony nor other layman proof establishing or tending to establish that the newly discovered Serial # 288659LW [JC0015] was capable of discharging any of the rounds, introduced as People's Exhibit 2B, on evidence or that any of the Four Newly discovered Serial # 288659LW Colt .38 [JC0015] Rounds imputed to plaintiff on 11/9/87 was capable of discharging the Loaded firearm introduced in the april, 1989 State Petit Jury trial as Pedople's Exhibit 2A [see e.g. ¶ 61, Post ("The Second Weapon") on evidence)].

7. There were neither DNA nor Fingerprints or palmprints connecting Plaintiff Candlaria to direct or constructive possession of a .38 Caliber revolver on 11/9/87 or ever since plaintiff's DOB on 3/21/57 and, during the April, 1989 State Petit Jury Trial, Plaintiff Candelaria took the stand and, under Oath, denied ownership possession of the "SECOND WEAPON" on evidence and also denied the accusation lodge against him by the City/State of New York through the NYPD and the D.A. and, besides Victor and Cesar arias story on 4/7/89 that in the evening of 11/9/87, Plaintiff candelaria Possessed and attempted to display and/or aim at Victor arias and Cesar arias [Victor's Brother] grabbed from Plaintiff and turned over to Victor One Specific "COLT .38, LIKE A TWO INCH BARREL, BLACK COLOR" caliber revolver there were neither witness nor evidence connecting Plaintiff to a .38 caliber revolver on 11/9/87 or ever in any contry of the the United STATES.

8. Although Plaintiff had been charged, and the City/State of N.Y. subsequently dismissed, with commission of a "IMITATION PISTOL" under NYC ADMIN. code § 436-5.0(g)(1987), imputed (or not) ownership possession of a newly discovered Serial # 288659LW Colt .38 Two Inch Barrel [JC0015] Loaded "GUN RECOVERED BY CORRECTION OFFICER ARIS VICTOR, SH. # 9519" [id.], with the Four Newly discovered Serial 3 288659LW Colt .38 Caliber Rounds [JC0015], but INOPERABLE BECAUSE OF A FAULT FIRING PIN, one part or another, (a) is neither prosecutable under Article 265 of the NY Penal Law as an OPERABLE FIREARM, nor as DEADLY WEAPON" capable of causing the death of the underlying victim [see JC0033] within the meaning and intent of NY Penal Law § 15.00(1)(2) and id., § 10.00(11), (12) and Count One of the underlying Supersiding Indictment # 8897/88 [JC0040-JC0041], or as a "toy or imitation pistol or revolver," within the meaning and intent of the NYC Administrative Code , and there were not evidence introduced in the april, 1989 State Petit Jury trial establishing that either of the four Newly discovered Serial # 288659LW [JC0015] Rounds was live and capable of discharging the newly discovered Serial # 288659LW [JC0015] "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" [JC0018-JC0022] and, in regarding to the Newly Discovered evidence heretofore summarized, the Defendants City/State Of New York [through Defendant UCS] now claimed and, indeed, conceded, in their adoptive admission, words and phrases, that (i) the Newly discovered evidence merely entitled Plaintiff candelaria to a "NEW TRIAL:"

"HABEAS CORPUS RELIEF IS UNAVAILABLE TO APPELLANT WHERE THE RELIEF TO WHICH APPELLANT WOULD BE ENTITLED IS A NEW TRIAL, NOT IMMEDIATE RELEASE,"

[re-printed from document Bearing Bate-stamp # JC0001-JC0161, at JC0103--JC0110 , with emphasis at JC0108 (underlines and all-caps formats added)].

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9. It is Plaintiff candelaria's claims that (a)

"IT HAS LONG BEEN THE RULE IN THIS CIRCUIT THAT COLLATERAL ESTOPPEL NEVER BARS THE UNITED STATES FROM USING EVIDENCE PREVIOUSLY SUPPRESSED IN STATE PROCEEDINGS IN WHICH THE UNITED STATES WAS NOT A PARTIES,"

[accords, U.S. v. Davis, 906 F.2d 829, at 232 (2d Cir. 1990)] and (b):

"STATE COURT RULING IN CRIMINAL TRIAL ARE NOT BINDING ON FEDERAL COURT, BECAUSE THE STATE AND NATIONAL SOVERIGNTY ARE SEPARATE AND DISTINCT FROM ANOTHER,"

[accords, U.S. v. Miller, 14 F.3d 761, at 763 (2d Cir. 1994)(underlines and All-caps formats added) and (c):

"IF COLLATERAL ESTOPPEL IS EMBODIED IN THE GUARANTEE AGAINST DOUBLE JEOPARDY, THEN ITS APPLICABILITY ... IS NOT LONGER A MATTER TO BE LEFT FOR STATE COURT DETERMINATION WITHIN THE BROAD BOUND OF FUNDAMENTAL FAIRNESS, BUT A MATTER OF CONSTITUTIONAL FACT WE MUST DECIDE THROUGH AN EXAMINATION OF THE ENTIRE RECORD,"

[accords, Asher v. Suenson, 397 U.S. at 442-443, 90 S.Ct. at 1193-1194].

10. Possession of a weapon must be volutary in order to be culpable, mental State, and the the weapon must be both, loaded, and capable of discharging live ammunition under N.Y.S. Penal Law Article 265 : consequently, New York Penal Law § 265.03(2) provides, in relevant part, that (a):

"A PERSON IS GUILTY OF CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE WHEN, WITH INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER:  
(2) HE POSSESSES A LOADED FIREARM,"

[id., § 265.03(2)(1987)(all-caps formats and underlines added)][hereinafter referred to as "CPW-2nd" or "Criminal Possession of a Weapon 2°"]], and (b) N.Y. Penal Law § 265.02(4)(1987) provides that:

"A PERSON IS GUILTY OF CRIMINAL POSSESSION OF A WEAPON IN THE THIRD DEGREE WHEN:

(4) SUCH PERSON POSSESSES ANY LOADED FIREARM. SUCH POSSESSION SHALL NOT, EXCEPT AS PROVIDED IN SUBDIVISION ONE OR SEVEN, CONSTITUTE A VIOLATION OF THIS SECTION IF SUCH POSSESSION TAKES PLACE IN SUCH PERSON'S HOME OR PLACE OF BUSINESS,"

[accords N.Y. Penal Law § 265.02(4)(1987)(now Repealed as of 2006)(underlines and All-caps formats added)][hereinafter referred to as "CPW-3rd" or Criminal Possession of a Weapon 3°].

A: The PARTIES To This 42 U.S.C. §§ 1983, 1985, 1986 Complaint:

a: Plaintiff Juan Candelaria ("Plaintiff" or "Candelaria")

11. Plaintiff Juan Candelaria ("Plaintiff" or "Candelaria") is a Citizen of the U.S. and of the State of Florida and a native of the COMMONWEALTH OF PUERTO RICO and a member of the political community to which he belongs and, following his arrest in and extradition from, Miami, Florida, to the State of New York on 9/4/88, Plaintiff (a) has been denied timely and proper Medical Attention, (b) was allowed to reach End-Stage Renal Disease ("ESRD") in 1997, (c):

"BETWEEN 1997 AND 2007, MR. CANDELARIA WAS HOSPITALIZED MORE THAN 25 TIMES (SEE TABLE.) NO LESS THAN 20 OF THESE ADMISSIONS WERE FOR ACCESS FOR DIALYSIS. HE RECEIVED A DECEASED DONOR RENAL TRANSPLANT IN OCTOBER 2005. HIS RECORDS INDICATES THAT HE HAS NO LARGE VEINS AVAILABLE IN HIS UPPER EXTREMITIES FOR FUTURE HEMODIALYSIS ACCESS AND THAT HE HAS FAILED PERITONEAL DIALYSIS. GIVEN THAT THE LIFE EXPECTANCY OF A DECEASED DONOR RENAL TRANSPLANT IS 10-15 YEARS, MR. CANDELARIA WOULD BE EXPECTED TO REQUIRE DIALYSIS AGAIN BY 2020. HIS PHYSICIANS' ABILITY TO MAINTAIN HIM ON DIALYSIS WILL BE SEVERELY LIMITED DUE TO THE LOSS OF MULTIPLE ACCESS POINTS PRIOR TO HIS KIDNEY TRANSPLANT."

[recited from Document Bearing Bate-Stamp # JC0000-JC0150, at JC0125 (underlines and All-caps formats added)], (d) to SUMMARIZE:

"MR. CANDELARIA CANNOT BE EXPECTED TO LIVE FOR MORE THAN SIXTH MONTHS WHEN HE RETURNS TO DIALYSIS IN 2020,"

[reprinted from Document Bearing Bate-Stamp # JC0127 (underlines and All-caps formats added)], (e) without a TRIAL BY JURY OR BY JUDGE, with neither Conviction upon a jury or bench trial nor sentence imposed by a Jury or by a Judge, under the THEORIES that (i) in the evening of 11/9/87 he was unlawfully possessing , and (ii) that he:

"WERE WAIVING A GUN AROUND. THAT GUN WAS TURNED OVER TO THE POLICE. AND IT WAS THE GUN THAT FIRED THE BULLET THAT WAS FOUND IN THE BODY OF THE DECEASED,"

(iii) WITHOUT AFFORDING HIM A SINGLE OPPORTUNITY TO CONFRONT HIS ACCUSERS-- THESE WHO "TURNED OVER TO THE POLICE" THE PRESUMPTIVE "GUN" [cf. JC0015, JC0033].



b: The Defendants Named Herrein And Those Acting In concert With Them:

i. The Corporate Defendant "The City Of New York" ("NYC") is located in the Southeastern New York, at the Mouth of The Hudson River, and is made up of five boroughs, viz/ MANHATTAN, BROOKLYN, THE BRONX, QUEENS, AND RICHMOND (STATEN ISLAND), which was created by the Defendant N.Y.S. Legislature by the passing in 1897 of one Act to Unit into One COMMUNITY, under the CORPORATE name of the "CITY OF NEW YORK," the various communities laying in and about New York Harbor [see e.g. Laws of 1897, Ch 378], and since 1914, Defendant N.Y.S. Legislature has divided Defendant State of New York's voluntry government into 62 Counties, and FIVE of the Sixty-two Counties [namely New York , Kings , Queens, Richmond, and Bronx] are MERGED with the Defendant NYC [see e.g. N.Y. McKinney's County Law § 900], following the Colonial Authorities's Decision in 1683 to enact tht the Provicen of NYS or NY be divided into Twelve Counties [ALBANY, CORNWALL, DUKES, KINS, N.Y., ORANE, QUEENS, RICHMOND, SUFFOLK, DUTCHESS, ULSTER AND WESTCHESTER], and, a priori, the Defendant NYC has conspired under State or Color of Government Law to deprie Plaintiff candelaria of his civil, statutory and constitutional rights under State Laws and constitution and his rihts, privileges and immunities otherwise guranteed or protected by the Constitution and Laws of the United, while conducting business under Color of N.Y.S. Stae Law, both in the individual and in its official/business cpcity.

ii. Defendant State of New York ("New Yorll State" or NYS) is being Sued Individually and in its cpacity as being comprised of Counties, Cities, Towns and Villages, to deprive plaintiff candelaria of his civil, statutory and Constitutional rights, unde its laws and under the Constitutiona and Laws of the U.S. United States [see e.g. N.Y.S. Const. Art. 9, § 1].

II -THE SPECIFIC WRONG COMPLAINING OF AND THE GRAVAMENS OF THE UNDERLYING CAUSES OF ACTION IS THAT BY SUPPRESSING EVIDENCE OF THE NEWLY DISCOVERED SERIAL # 288659LW COLT .38, TWO INCH BARREL CALIBER REVOLVER IMPUTED TO PLAINTIFF AS A "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" [JC0015] ON 11/9/87--THE CITY/STTE OF NEW YORK HAS FAILED TO TRIE -CONVICT-PLAINTIFF OF THE OFFENSES OR INFAMOUS CRIMES WITH WHICH HE HAD BEEN CHARGED. UPON THE THEORY THAT IN THE EVENING OF 11/9/87 PLAINTIFF CANDELARIA POSSESSED AND AIMED AT CORRECTION OFFICER ARIS VICTOR, SH. # 9419 BUT CESAR ARIS GRABBED FROM PLAINTIFF'S HAND AND TURNED OVER TO VICTOR ARIAS A GUN NYPD NON-TESTIFYING SGT. BENARDO BLAIR OBTAINED FROM VICTOR ARIAS OR A GUN WHICH WAS TURNED OVER TO THE NYPD BY CORRECTION OFFICER ARIAS VICTOR, SH.#9419

14. A Finding that Plaintiff Candelaria was being prosecuted in April, 1989, under the primary theory that (a) in the evening of 11/9/87 Plaintiff Possessed and aimed a Victor Arias One Gun flow from the following Statement made by the prosecutor during the april, 1989 State Petit Jury Trial":  
 (i) Question: : Never seen it before," ANSWER: "I ONLY SAW IT THE OTHER DAY WHEN THEY TOOK IT OUT HERE IN COURT. No.;" Question: ISN T IT A FACT THAT'S THE GUN YOU TRIED TO SHOOT VICTOR ARIAS WITH?," ANSWER: "IT S NOT TRUE," [quoted from Pg. 389, Ls. 1--11 of the April, 1989 State Petit Jury Trial Transcript (underlines and All-caps formats added)], whereas (b) newly discovered Pre-Sentence Report # QS88-00612, Court Control # 1020203924P, additionally documented that:

"ON 11/9/87, THE DEFENDANT, WHO WAS ALLEDGEDLY IN POSSESSION OF A .38, CALIBER REVOLVER LOADED WITH FOUR LIVE ROUNDS, THREATENED TO SHOOT MR VICTOR ARIAS WITH IT IN A TEXACO STATION AT 4 GRAND STREET, BROOKLYN,"

[see e.g. Document # JC00 ].

15. A Copy of a Subpoena issued on 3/13/89, signed by A.D.A. David Neier, requested on 3/13/89, the following prominent documents, namely, (a) ARREST REPORT # "67769" [compare or contrast Document # JC0013], and (b) UF 61 COMPLAINT NUMBER: "12 280" [comare or contrast Document # JC0012], under the theory that the "GUN USED IN MURDER," at 4 Grand street was the presumptive gun recorded therein [see e.g. Document # JC0044][cf. JC0012-JC0016].

a: The April, 1989 Trial Story Of Cesar Arias Does Not Invest The Arresting Officers John Silva, SH. # 2671 And Ann Marie Hardy, SH. # 35187 With Authority Of Probable Causes Or Of Reasonable Suspicion The Arresting Officer Silva and Hardy Otherwise Lacked On 11/9/87

16. Neither Officer Silva Nor Officer Silva's Co-officer Hardy had ever observed Plaintiff Candelaria in possession of a .38 Caliber revolver on 11/9/87 or ever between Plaintiff's birthday on 3/21/57 and 2009 and, Although the arresting Officer would claimed that the Basis for probable cause was a PRESUMPTIVE GUN THREAT THAT PLAINTIFF HAD PRESUMPTIVELY MADE AGAINST CESAR, a/k/a/, CAESAR ARIS [see e.g. ¶¶ 13-14, Post], (a) Cesar arias DENIED ANY GUN THREAT UPON HIS PHYSICAL INTRIGRITY AND, THE ALLEGED MOTIONING OF PLAINTIFF TOWARD HIS WAISTBAND, CANNOT BE THE BASIC FOR PROBABLE CAUSE:

- i. "Q: NOW, AFTER HE [YOUR BROTHER CORRECTION OFFICER ARIAS VICTOR, SH. #9419] LEFT, WHAT, IF ANYTHING, HAPPENED NEXT?  
 A: ABOUT FIFTEEN MINUTES LATER, GIOVANNI COME BACK WITH TWO FRIENDS AND TELL ME, GIVE ME MY GUN BACK. I TOLD HIM, IT'S IS TOO LATER. I GIVE IT TO MY BROTHER [VICTOR ARIAS]. THEN HE SAID TO ME, YOU BETTER GIVE ME THE GUN BACK. THEN HE HAD HIS HANDS BY HIS WAIST.  
 Q: WHERE?  
 A: BY HIS WAIST. THE I SAID TO HIM, HOLD IT, HOLD IT. I MAKE BELIEVE I HAD THE GUN. I SAID, LET ME GIVE IT BACK TO YOU. I WENT INSIDE THE THE OFFICE AND I CALLED THE POLICE.
- ii. Q: THERE ARE TWO OTHER PEOPLE WITH HIM?  
 A: TWO OTHER PEOPLE WITH HIM. YES.
- iii. Q: AFTER YOU CALLED THE POLICE, WHAT HAPPENED NEXT?  
 A: THE POLICE COME DOWN. HE TAKE OFF WITH THE CAR AND THEN HE PARKED THE CAR ABOUT ONE BLOCK AWAY AND TRIED TO COME BACK AGAIN. THE POLICE WENT OUT TO THE STATION. HE WAS ACROSS THE STREET FROM THE STATION ABOUT ONE BLOCK. THEN I POINT[ED] TO THE POLICE. THERE IS HIM. THE POLICE LADY [ANN MARIE HARDY, SH. # 31587]] AND ONE MAN [OFFICER JOHN SILVA, SH. # 2671] RUN AFTER HIM.
- iv. Q: THEY RAN AFTER HIM?  
 A: THAT'S RIGHT.
- v. Q: DID YOU SEE WHERE THEY WENT?  
 A: SOUTH THIRD, STRAIGHT.
- Q: AFTER THAT?  
 A: ABOUT FIVE MINUTES OR SO—THE PLICE BRING HIM BACK WITH THE HANDCUFFS IN THE BACK AND NO SHIRT. AND THEN I TOLD, THAT'S THE GUY. MR [A.D.A. DAVID] NEIER: NO FURTHER QUESTIONS,"

[re-printed from Document Bearing Bate-##

JC0073, LS. 9-25 through JC0074, LS. 1-19, copy of which is attached herewith (underlines, materials in bracket marks and All-caps formats added)].

b: Probable Cause For The Warrantless arrest Of Plaintiff On 11/9/87 14  
 Cannot Be Predicated Under the Theory That Plaintiff Candelaria  
 "HAD HIS HANDS BY HIS WAIST" While Demanding His Personal effect  
 [A Presumptive Gun] Back Under the Principles Of People v. De Bour-  
40 N.Y.2d 210, at 215 & 223 And Pwople v. Bracey-41 N.Y.2d 296, at 82  
 310 And-Because The Following Corresponding Stories of Officers Silva and  
 Hardy as to the Basic for Probable cause-Is AMBIGUOUS-Plaintiff  
 May Rely On the UF-61 Complaint # 12, 280 [JC0012] To Resolve The  
AMBIGUITY And So Bringing The arresting Officer Within the common Law  
 Fraud [Davis v. WAKELEE-156 U.S. 680, at 689-690 (1895)]

17. On 3/31/89, Officer Silva s co-officer Hardy were asked and, under  
 Oath, testified that (a) upon receiving a radio transmission reporting an  
 unidentified man with a gun at unknown location, they "PROCEEDED TO SOUTH  
 FOURTH BETWEEN HAVEMEYER AND MARCY" at Brooklyn [id., at Pg. 29-30], and that  
 (b) upon arriving to the location, the following event took place:

"Q: WHEN YOU GOT TO THE LOCATION, WHAT IF ANYTHING DID YOU SEE THERE?  
 A: WE HAD MET THE COMPLAINANT BY THE NAME OF CBESAR ARIAS, I BELIEVE  
 HIS NAME WAS.  
 Q: BY THE WY, DID YOU KNOW HIS NAME AT THAT TIME?  
 A: NO, I DIDN'T.  
 Q: NOW, WHAT IF ANYTHING HAPPENED WHEN YOU FIRST SAW THE INDIVIDUAL  
 YOU LEARNED TO BE NAMED CAESAR ARIAS?  
 A: HE STATED THAT THERE WAS A MAN WHO HAD COME TO THE GAS STATION,  
POINTED A GUN AT HIM.  
 HE SITTED THAT THE PERSON WENT HALFWAY DOWN THE BLOCK, WAS STINDING  
 ON THE CORNER . HE THEN POINED THE INDIVIDUAL OUT TO ME,"

[see Pg. 31, Ls. 3-17 of the Wade Hearing of 3/31/89's transcript containing  
 the Direct Testimony Of Officer Hardy (underlines and All-caps formats  
 added)], whereas Officer Hardy proceeded answering question on 3/31/89 (c):

"Q: OKAY. NOW, AFTER MR. ARIAS POINTED TO THE DEFENDANT, WHAT IF  
 ANYTHING HAPPENED NEXT?  
 A: I THEN BEGAN TOPURSUE THE DEFENDANT. HE BEGAN TO FLEE.  
 Q: AND DID ANYBODY ELSE GO—CHASE AFTER THE DEFENDANT?  
 A: YES, POLICE OFFICER SILVA,"

[ID., AT Pg. 32, Lines 1—9 ] and Officer Hardy continued with her story (d):

"Q: NOW, WHO APPREHENDED HIM?  
 A: OFFICER SILVA.  
 Q: AND WHAT HAPPENED NEXT?  
 A: AT THIS POINT HE WAS REAR HANDCUFFED AND PLACED IN AN RMP AND  
 WE PROCEEDED BACK TO THE GAS STTION ON SOUTH FOURTH STREET.  
 Q: NOW, WHO WAS WITH YOU AND THE DEFENDANT IN THE POLICE CAR?  
 A: OFFICER SILVA AND [MY]SELF.  
 Q: NOW, WHEN YOU WENT BACK TO THE TATEXACO GAS STATION, AT FOURTH  
 GRND STREET—  
 THE COURT: IS IT GETTY OR TEXACO?  
 MR. [A.D.A. DAVID] NEIDER: IT'S TAXACO.  
 THE COURT: ALL RIHT.,"

[id., at Pg. 33-34].



18. Officer Hardy additionally testified that (a) as plaintiff was being chased by her and Officer Silva, he started removing his jacket and his shirt [ *id.*, at 33-46], and that (b) Plaintiff was searched and gun was not found in his person or property:

"Q: AND YOU SEARCHED HIM AT THAT TIME?

A: YES, SIR.

Q: AND THERE WAS NO GUN ON HIM: IS THAT CORRECT?

A: YES, SIR.

Q: THERE WAS NO GUN IN THE JACKET OR THE SWATER WHEN THEY WERE RETRIEVED?

A: NO, SIR.

Q: NOW, DID THERE COME A TIME WHEN YOU PUT HIM BACK INTO YOUR RMP?

A: YES, SIR.

Q: BY THE WAY, DID YOU HAVE ANY CONVERSATION WITH THE DEFENDANT AT THAT TIME?

A: NO, SIR.,"

[*id.*, at Pg. 46, Ls. 2-24 (underlines and all-caps formats added)], and

(c) Officer Silva also denied finding any gun in plaintiff's person or in the jacket or in any of plaintiff's personal property:

"Q: WHEN YOU ARRESTED HIM, DID YOU PUT HIM DOWN AT ALL—WHEN YOU GRABBED HIM?

A: WHEN I GRABBED HIM, WE BOTH WENT DOWN TO THE GROUND AND I CUFFED HIM.

Q: DID YOU FIND ANYTHING ON HIM?

A: NO.

Q: NOW, THIS JACKET THAT RETRIEVED BY ANOTHER OFFICER, WAS A GUN FOUND IN THE JACKET?

A: NO.

Q: WAS THE GUN FOUND IN THE SHIRT?

A: NO.

Q: WHAT WAS FOUND IN THE JACKET, DO YOU KNOW?

A: SOME UNITED STATES CURRENCY AND SOME WHITE POWDER.

THE COURT: THAT WAS FOUND IN THE JACKET?

A: YES,"

[re-printed from Pgse- 1-22, at 20, Ls. 4-25 through Pg. 21, Lines 1-3 of the 3/31/89 Wade Hearing Transcript containing the Story Of Officer John Silva, Sh. 2671 (UNDERLINES AND All-caps formatse added)].<sup>2</sup>

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<sup>2</sup> Cesar or Caesar arias never testified that he saw a gun in Plaintiff's hands or in the hand of any of the two presumptive "FRIENDS" of Plaintiff candelaria [cf. *People v. Ponder*, 54 N.Y.2d 160, at 165, 429 N.E.2d 735 (citations omitted), with *People v. Reid*, 69 N.Y.2d 469, at 475-476 (N.Y. Ct. app. 1987)].

B: THE FIRST OCCURENCE-UNDERSPINNING RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419 FROM HIS BROTHER CESAR ARIAS OF THE NEWLY DISCOVERED SERIAL # 288659, A COLT .38 CALIBER REVOLVER [JC0015] IMPUTED TO PLAINTIFF AS A "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419-WHETHER "BLACK COLOR" OR COLORLESS-CAN NOT FORM THE BASIC OF PROBABLE CUSE FOR PLAINTIFF'S SUBSEQUENTLY WARRANTLESS ARREST OF 11/9/87 BY OFFICER SILVA/HARDY [SEE ¶¶ 10-16, ANTE][CF. SIBRON V. N.Y.-392 U.S. 40, at 63 (1968) AND U.S. V. MYER-308 F.3D 251, 263 (2ND CIR. 02)]

19. The Arresting Officers Hardy and Silva testified that: upon finding neither gun nor weapon or firearm on plaintiff's person or in his property [see e.g. ¶¶ 10-16, Ante], they took plaintiff to their Precinct, wherein they received a gun from a non-testifying Sgt., which had been recovered, without they knowing it, under the following circumstances (a): According to Cesar And His brother Correction Officer Arias Victor's Own words, CESAR:

- i. "Q: NOW DIRECTING YOUR ATTENTION TO NOVEMBER 9, 1987, AT APPROXIMATELY 7:20, 7:30 p.m., WERE YOU WORKING AT THAT TIME?  
A: YES, SIR.
- Q: AND CAN YOU TELL ME WHO WAS PRESENT IN THE GAS STATION AT THAT TIME?
- ii. A: MY BROTHER [VICTOR ARIAS, A NYC CORRECTION OFFICER], I AND THE ONE FRIEND.  
Q: NOW, WHAT HAPPENED AT THAT TIME?
- iii. A: WELL, AT THAT TIME, MY BROTHER [VICTOR ARIAS] WAS IN THE GAS STATION AND GIOVANNI COME IN TO DROP HIS CAR TO BE REPAIRED.  
Q: WHO?  
A: GIOVANNI. HE COME DOWN TO DROP HIS CAR OFF TO BE REPAIRS AND THEN HE HAVE LUGGAGE OR SOMETHING IN THE CAR. HE TAKE THEM OFF AND TOLD ME TO CALL THE TAXI. HE GIVE ME A DOLLAR TO HAVE CHANGE. I WENT ACROSS THE STREET TO CHANGE THE DOLLAR AND I BE BACK. WHEN I BE BACK, I CALLED THE TAXI.
- iv. Q: SLOW DOWN. DO YOU SEE ANYBODY IN COURT THAT YOU RECOGNIZE?  
A: YES.  
Q: COULD YOU POINT HIM OUT PLEASE?  
A: THIS GUY THERE.  
MR. [A.D.A. DAVID] NEIER: YOUR HONOR.  
MR. [SALVATORE] CANONICO: INDICATING THE DEFENDANT, YOUR HONOR.  
THE COURT: INDICATING THE DEFENDANT.  
Q: WHO IS THAT MAN?  
A: GIOVANNI.  
Q: YOU CALL HIM GIOVANNI?  
A: YES, SIR.
- v. Q: WHAT HAPPENED NEXT?  
A: THEN WHEN I CALLED THE TAXI-WHEN THE TAXI COME IN, HE HAVE SOME WORD WITH MY BROTHER [VICTOR ARIAS]. THEN HE PULLED A GUN AND POINT[ED] TO MY BROTHER, AND I TAKE THE GUN OUT HIS HANDS.
- vi. Q: WHAT DID YOU DO WITH THE GUN?  
I GIVE IT TO MY BROTHER [CORRECTION OFFICER ARIAS VICTOR, SH. # 9419].
- vii. Q: WHAT HAPPENED?  
A: MY BROTHER TAKE DOWN THE GUN TO THE PRECINCT.  
[quoted from Document: # JC0071, Is. 2-25, JC0072, Is. -1-25, and JC00 73, Is 1-5]

- a. The Narrative On 4/7/89 Of Correction Officer Arias Victor, Sh. #9419 Identifying As A "A Colt .38, Like A To Inch Barrel, Black Color" [Tr. 283: 8-10]-If Credited/Accredited By The Jury On 4/7/89-Could Be Neither Discredit Nor Accredited By Lay Or Expert Witnesses Without First Hand Knowledge Of The Event Encompassing The Gun Possession Story On 11/9/87

20. If It is reasonably to argue that the way in which an object, such as a gun, weapon, or firearm, is perceived must be determined by the total context or field in which it exists and, consequently, the whole gun, loaded weapon or firearm, is different from the sum of its parts, and neither eyewitness account can be contradicted by non-eyewitness nor by expert witness who had never actually witnessed the event and,

"an act done by an agent cannot be varied, qualified, or explained either by his declarations, which amount to no more than a mere narrative of a past occurrence, or by an isolated conversation held, or an isolated act done, at a later period,"

[see e.g. R. Co. O'Brien, 119 U.S. 99, at 105, 7 S.Ct. 172, at 175, supra (emphasis added)], where in the case sub judice (i) Victor and (ii) Cesar Arias were the only eyewitness on 4/7/89 placing Plaintiff in Possessing of a weapon in the evening of 11/9/87 in a Texaco Gas Station in which Plaintiff presumptively came in to drop off his car for repair and (iii) contrasted known evidence, from "Newly Discovered Evidence:

"The main falsehood that now requires reversal-uncovered for the first time during desposition on remanded-is Waiter's false testimony [...],"

[taken from Drake v. Portuondo, 553 F.3d 230, at 241 (2d Cir. 2009)(emphasis and materials in bracket marks added)], and the NYS Court of Appeals has also contrasted New, from Old information, or newly discovered, from known information:

"The case upon this appeal is very much complicated by the fact that newly discovered evidence is the ground upon which the accused's claims are predicated"

[see generally People v. Shilitano's, 218 N.Y. at 161, at 168-171 (N.Y. Ct. App. 1961) (just summary of what the court had said)], and finally, the Second Circuit had also contrast a known specifically described caliber revolver, from a newly discovered different and distinct caliber revolver:

"[[The Witness] told the police detectives that the man he had seen shooting was holding a [...] a black . 44 caliber revolver with brown handles, whereas the actual murder weapon was a black nine millimeter semi-automatic,"

[taken from Leka v. Portuondo, 257 F. 3d 89, at 107, see also id., at 99-104 & 104-107 (2d Cir. 2001)(finding a suppression of the underlying information, a Due Process Violation].

21. " MR NEIER: What happened, the defendant had a dispute with the owner of a garage, during that dispute there was a struggle over the gun and the owner took it away. He called his brother, or his brother was present and his brother is a corrections officer. He took that gun to the precinct. While the brother was in the precinct, the defendant returned with two other individuals and demanded his gun back. At that point the garage owner says, "My brother has the gun. Let me go call him." He called the police. The police then got the man with the gun call and responded to the gas station,"

[see e.g. Tr. 93: 3-25 (emphasis added)] indeed,

(a): During the March 31, 1989 State Proceeding, Wade Hearing, Officer Hardy additionally testified that She escorted Plaintiff, along with her

co-officer silva, to their Precinct's Station house where They Received a GUN:(a):

i> "Q: WHO WAS ESCORTING MR. CANDELARIA?

A: OFFICER SILVA AND MYSELF.

Q: YOU EACH HAD HIM BY AN ARM?

A: YES.

ii> Q: NOW, DID YOU NOTICE VICTOR ARIAS IN THE PRECINCT WHEN YOU ARRIVED WITH THE DEFENDANT?

A: NO, I DID NOT.

iii> Q: WHO TOOK CARE OF THE GUN THAT WAS AT THE PRECINCT?

A: SERGEANT BLAIR WAS IN POSSESSION OF THE GUN AT THIS POINT, AT WHICH POINT HE HANDED IT TO OFFICER SILVA TO VOUCHER."

[re-printed from Document # JC0055, Ls. 1-7 (underlines and All-caps formats added)] and, in regarding thereof, Officer John Silva, SH. # 2671

additionally conceded that he was the Officer who indeed, received and

VOUCHERED THE GUN IN QUESTION, in his own words and phrases (b):

i< Q: NOW, LET ME SEE IF I UNDERSTND, YOU'RE THE ONE THAT VOUCHEREDE THE GUN?

ii< A: YES

Q: BUT IT WASN'T TURNED OVER TO YOU--

iii< A: THE SERGEANT GAVE IT TO ME.

Q: THAT WAS THE PERSON THAT TURNED IT OVER TO YOU--

A: YES,"

[REPRINTED FROM Pg. 25, Lines 5-25 of the March 31, 1989 Wade Hearing Tr.

(underlines and All-caps formats added)]

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Under Mutual Life Ins. Co. v. Hillmon-145 U.S. 285, at 295-296 (1892), accords, people v. James, 93 N.Y.2d 620 the Newly Discovered Serial # 288659, LW Colt .38 Two Inch Barrel Caliber Revolver [see e.g. Document # JC0015] is admissible to set the "FACTS THUS DEVELOPED IN THEIR TRUE LIGHT" [id., 295-296].



22. In People v. Ford, 840 N.Y.S.2d 668 (3rd Dep't. 2007), the Court said that:

"SINCE THE PROSECUTION HAD TO BE ABLE TO PROVE THEIR CASE, THE PHOTOGRAPHS WERE ADMISSIBLE AND THE COURT PROPERLY INSTRUCTED THE JURY TO AVOID MAKING EMOTIONAL JUDGMENT BASED ON THE PHOTOGRAPHS [BECAUSE] THEY WERE USED TO SUPPORT A DISPUTED OR MATERIAL ISSUE,"

[id., at 840 N.Y.S.2d 668][see also Matter of Gomez v. Fischer, 74 A.D.3d - 1399 (3rd Dep't. 2010)] and, during a Wade Hearing Conducted on 3/31/89, NYCPD Officer John Silva, SH. # 2671, denied any personal knowledge about the presumptive .38 Caliber Revolver Correction Officer Arias Victor, SH. # 9419 and his brother Cesar Arias were being accused Plaintiff Candelaria of possessing in the evening of 11/9/87, in his own words:

"Q: NOW, OFFICER SILVA, YOU DO NOT KNOW HOW THAT GUN GOT TO THE PRECINCT, DO YOU?

A: VICTOR BROUGHT IT TO THE PRECINCT.

Q: BUT YOU DID NOT KNOW IT AT THE TIME?

A: NO, I DID NOT.

Q: IT WAS ONLY LATER SOMEBODY TOLD YOU?

A: WHEN I GOT TO THE PRECINCT I WAS TOLD BY THE SERGEANT AND VICTOR THE STORY.

Q: HOW MANY POLICE OFFICERS HANDLE THAT GUN BEFORE YOU GOT IT?

A: I HAVE NO IDEA HOW MANY POLICE OFFICERS HANDLE IT BEFORE I GOT IT,"

[quoted from Document Bearing Bate-Stamp Numer JC0053, Lines 23-25 through JC0054, Ls. 1-10 (underlines and All-Caps Formats added)].

23. During his April, 1989 State Grand Jury Trial Story, NYPD Officer John Silva, SH. # 2671, took the Stand and, pursuant to the INstruction of the NYPD and the Office of the Kings Co. D.A. and with the knowledge of NYC and the UCS were asked and, under Oath, answered the following direct questions posed by the A.D.A. on whose behalf he was being Testifying:

"Q: WHAT DOES VOUCHERING MEAN?

A: THAT'S TAKING PROPERTY AND KEEPING IT FOR SAFEKEEPING.

Q: CAN YOU TELL ME UNDER WHAT NUMBER THIS WAS VOUCHERED?

A: CAN I REFRESH MY MEMORY?

A: YOU MAY REFRESH YOUR RECOLLECTION.

A: IT WAS VOUCHERED UNDER VOUCHER D-12747,"

[quoted from Pg. 313, Ls. 1-8 of the april, 1989 State Jury Trial Transcript, accords Document Bearing Bate-Stamp # JC0079 (underlines.-caps formats added)].

24. The April 7, 1989 Story Of Cesar Arias Proceeds from the preceded Page:

"Q: WHAT HAPPENED NEXT?

A: THEN WHEN I CALLED THE TAXI--WHEN THE TAXI COME IN, HE [IN REFERENCE TO PLAINTIFF CANDELARIA] HAVE SOME WORD WITH MY BROTHER [IN REFERENCE TO CORRECTION OFFICER ARIAS VICTOR, SH. # 9419]. THEN HE [a] PULLED A GUN AND [b] POINATE TO MY BROTHER, AND [c] I TAKE THE GUN OUT OF HIS HANDS.

Q: WHAT DID YOU DO WITH THE GUN?

A: I GIVE IT TO MY BROTHER [CORRECTION OFFICER ARIAS VICTOR# 9419].

Q: WHAT HAPPENED?

A: MY BROTHER TAKE DOWN THE GUN TO THE PRECINCT,"

[quoted from Pg. 331, Ls. 17-25 through Pg. 332, Ls. 1-4,

Document Bearing Bate-Stamp # JC0071-JC0072 (underlines, materials in bracket marks and all-caps Formats added)][compare¶ 17, Antel].

25. Correction Officer Arias Victor, SH. #9419,

"Q: NOW, AFTER YOUR BROTHER [CESAR ARIAS] GAVE YOU THE GUN, WHAT DID YOU DO?

A: I WENT TO THE NINE O PRECINCT LOCATED AT UNION STREET AND GIVE THE GUN TO THE POLICE.

Q: DO YOU RECALL WHICH POLICE OFFICER YOU GAVE THE GUN TO?

A: GAVE THE GUN TO SERGEANT BLAIR.

Q: BLAIR.

A: YES, SIR,"

[quoted from Pg. 281, Ls. 3-25 of the underlying April 7, 1989 Jury Trial testimony's Transcript, copy of which is affixed herewith as Document bearing Bate- Stamp numbers JC0067, Ls. 18-25, through JC0068, Ls. 1 (underlines, materials in abrackt marks and All-Caps Formats added)].

26. Cesar Arias, Continues with the Second Part of His 11/9/87 Event's Story, as Documented during his April 7, 1989 Jury Trial Transcript:

"

"Q: WHAT HAPPENED?

A: MY BROTHER TAKE DOWN THE GUN TO THE PRECINCT.

Q: YOUR BROTHER LEFT, RIGHT?

A: YES, HE LEFT.

Q: YOU DON'T KNOW WHAT HE DID?

A: NO, I DON'T KNOW WHAT HE DID.

Q: NOW, AFTER HE LEFT, WHAT, IF ANYTHING, HAPPENED NEXT?

A: ABOUT FITEEN MINUTES LATER, GIOVANNI COME BACK WITH TWO FRIENDS AND TELL ME, GIVE ME MY GUN BACK,"

[see id., at pg. 332, Ls. 2-15, also affixed as Document Bearing JC0072A].

[Victor's Story Of 4/7/89 Proceeds from the Preceded Pages]

21

27. "Q: ALL RIGHT. WHAT HAPENED NEXT?

A: AFTER I GAVE THE GUN TO SERGEANT BLAIR, SERGEANT BLAIR GIVE THE GUN TO OFFICER SILVA.

Q: WHEN YOU FIRST GAVE THE GUN TO SERGEANT BLAIR, WS OFFICER SILVA PRESENT?

A: YES, SIR.

Q: NO. I'M NOT MAKING MYSELF CLEAR.

HOW LONG WERE YOU I N THE POLICE PRECINCT?

A: FOR HOW LONG I WAS THERE?

Q: YES. MR. NEIER: [A.D.A.]: I WILL WITHDRAW HE QUESTION.

Q: HOW MUCH TIME PASS BETWEEN THE TIME THAT YOU GVE THE GUN TO SERGEANT BLAIR AN THEN SERGEANT BLAIR GAVE THE GUN TO OFFICER SILVA?

A: ABOUT 440 MINUTES OR AN HOUR.

Q: WHEN OFFICER SILVA CAME TO THE PRECINCT, WAS ANYONE WITH HIM?

A: YES.

Q: WHO WAS WITH HIM?

A: THIS SENTLEMAN [indicating Plaintiff candelaria]

MR. NEIER: INDICATING THE DEFENDANT, YOUR HONOR.

THE COURT: YES.

[id., at Pg.282, Ls. 1--25 through Pg. 83, Ls. 1--4, accords document bearing Bate-stamp ## JC0068 through Jc0069, Ls. 1--5]:

"Q: NOW, WHAT KIND OF GUN WAS IT?

A: THAT WAS A COLT .38, LIKE A TWO INCH BARREL, BLACK COLOR.,"

[id., at Pg. 283, Ls. 6-8, accords Document # JC0069, Ls. 6-8 (underlines and All-caps formats added)]:

" THE COURT: WHO DID HE COME TO THE PLICE STATION WITH, THE DEFENDANT HE CAME WITH YOUR BROTHER OR—  
THE WITNESS: WITH THE POLICE OFFICER.,"

[id., at Pg. 283, Ls. 9--12, accords document # Jc0069, and finally, Victor Arias testified that the "BLACK Color" gun in question "LOOK LIKE THE SAME ONE" that the prosecution had introduced in Evidence added)], and (a) neither fingerprints nor palmprints or DNA were there inatroduced in the April, 1989 State Jury Trial linking Plaintiff Candelaria to any .38 Caliber revolver[cf. U.S. v. Hall, 845 F.2d 1281, at 1284-1285 (5th Cir. 1988):

"THE PRESENCE OF HALL'S FINGERPRINT ON THE CHECK SHOWS THAT HE POSSESSED THE CHECK AT SOME POINT AFTER IT HAD BEEN STOLEN FROM THE MAIL AND ATAKEN OUT OF ITS ENVELOPE,"

[id., 845 F.2d at 1284-1285 (citations omitted) (underlines and All-caps formats added)][cf. U.S. v. Johnson, 137 F.3d 970, at 974-975 ].

28. On 5/1/89, the Office of the Kings C.O. D.A. informed a "State 22 Judge that Plaintiff Candelaria [unbeknownst to him prior to that time]:

"WAS INDICTED FOR THAT INCIDENT UNDER INDICTMENT NUMBER 9954/87, AND RETURNED ON THE WARRANT ISSUED ON THE QUEENS INDICTMENT FOR THE STOLEN CAR DISCUSSED ABOVE. HE THEN WARRANTED ON BOTH CAESSES AND FLED TO FLORIDA,"

[re-printed from said letter of 5/1/1989 (All-caps formats added)], and (a) the "CERTIFICATION PURSUANT TO N.Y. CPLR § 4518(c) of the NYC DOCS's YELENA KORDOVA, copy of which is affixed herewith as Document # JC00'21, certified that the "ATTACHED 1 PAGE DOCUMENT" entitled "OLD HISTORY INMATE INQUIRY" WAS MADE IN THE REGULAR COURSE OF NEW YORK CITY DEPARTMENT OF CORRECTION BUSINESS," [id], and (b) the "OLD HISTORY INMATE INQUIRY" [which is or appeared to be a Hard copy of a computer print-out] documented that Plaintiff Candelaria was admitted to the NYC DOC on 11/11/87, and (c) that

"maxim, falsus in uno, falsus in omnibus, must still be given some force as a legal principle. Whatever qualifications may have been attached to it in modern time, we think this is a case for its practical application,"

[see e.g. People v. Ledown, 153 N.Y. 10, at 22 (N.Y. Ct. app. 1897) (emphasis added)]. The heretofore described/quoted "maxim," has been identified by Federal Circuit Court as an instruction to the jury that the jurors,

"could infer that witness who was willfully false in material part of testimony could be distrusted in other parts created permissible or permissive presumption under the law,"

[see e.g. Turner v. Calderon, 281 F.3d 851, at 865-866, and had been equally deemed by state Court, in particular, by the N.Y.S. Court of Appeal, under People v. Perry, 277 N.Y. 460, at 467-468, 14 N.E. 793 (N.Y. Ct. App. 1938), and in the case sub judice, the newly discovered "GUN RECOVERED BY CORRECTIONS OFFICER ARIAS VICTOR, SH. # 9419" [see Document # JC0015 ], not only brings the April, 1989, testimony of Officer Silva, and those other who corroborated him, within the "Falsus in uno, falsus in omnibus Maxim, heretofore described, but also his 4/7/89 allegations that he had vouchered under "Voucher D12747, the loaded firearm on evidence [see Tr. 313], also

"brings [him] within the principle of the common law that when a party asserts what he knows is false, or does not know to be true, to another's loss, and to his own gain, he is guilty of a fraud,--a fraud in fact, if he knows it to be false; a fraud in law, if he does not it to be true,"

[ accords, Davis v. Walkerlee, supra, 156 U.S. at 690 15 S.Ct. 555, at 558].



29. "LAW ENFORCEMENT AGENCIES CONSTITUTE BUSINESS AND RECORDS SYSTEMATICALLY MADE FOR CONDUCT OF BUSINESS ARE INHERENTLY HIGHLY TRUSTWORTHY,"

[accords, People v. Guidice, 83 N.Y.2d 630, at 635, 634 N.E.2d 981 (N.Y. Ct. App. 1993) (All-Caps Formats added)] and that (b) business Record is:

"ANY WRITING OR ARTICLE ... MAINTAINED BY AN ENTERPRISE FOR PURPOSE OF EVIDENCE OR REFLECTING ITS CONDITION OR ACTIVITY,"

[accords, People v. Bloomfield, 6 N.Y.3d 165 (N.Y. Ct. app. 2006)

(quoting N.Y. Penal Law § 175.00(2) (All-caps Formats added))][see e.g.

Espinal v. Bennett, 588 F. Supp. 2d 388 (E.D.N.Y. 2008) and

Delaware Canal, Supra, 250 U.S. at 128-129 (citations omitted)].

Blockburger v. U.S., 284 U.S. 299, at 304, 52 S.Ct. 180, at 182 (1932), which specifically hold that:

"[IF] THE SAME ACT OR TRANSACTION CONSTITUTES A VIOLATION OF TWO DISTINCT STATUTORY PROVISIONS, THE BEST TO BE APPLIED TO DETERMINE WHETHER THERE ARE TWO OFFENSES OR ONLY ONE, IS WHETHER EACH PROVISION REQUIRES PROOF OF A FACT WHICH THE OTHER DOES NOT,"

[quoted from U.S. v. Betancourt, 116 F.3d 74, at 75 (1997, 3rd Cir.)

(underlines and All-caps formats added)] and, applying the above rationales

to the case sub judice, during his April, 1989 State Grand Jury Trial,

Correction Officer Arias Victor, SH. # 9419, were asked and, under Oath

during direct examination by the prosecution, answered: (c):

"Q: NOW WHAT KINDS OF GUN WAS IT?

A: THAT WAS A COLT .38, LIKE A TWO INCH BARREL, BLACK COLOR,"

[see Document # JC0069, also Pg. 283, Ls. 1-8 of the 4/7/89 Trial Transcript

(underlines and All-caps formats added)], whereas on 10/23/07, the State of

N.Y. [see e.g. Documents ## JC0001--JC0011], for the first time (d)

disclosed newly discovered material showing that (i) SERIAL # 28#6591W is

the MARKING of the actual .38 Caliber "GUN RECOVERED BY CORRECTION OFFICER A

ARIAS VICTOR, SH. # 9419", (ii) NYPD Officer John Silva, SH. # 2671 had

actually Vouchered on 11/9/87 (iii) under NYPD Property Clerk's Invoice

# D12747 [see e.g. Document ## JC0012-JC0026, at JC0015].

C: PLAINTIFF CANDELARIA MAY RELY ON THE NEWLY DISCOVERED SERIAL # 2886591W 24  
COLT .38 CALIBER "GUN RECOVERED BY CORRECTION OFFICER ARIS VICTOR, SH. #  
9419" [JC0015] AND ON THE SUBSENT STORIES OF THE PROSECUTION'S CHIEF  
EYEWITNESSES VICTOR AND CESAR ARIAS'S/TESTIMONY OF OFFICER SILVA  
TO ESTABLISH HIS MISTAKEN OF IDENTITY DEFENSE AS TO ANY DIFFERENT OR  
DISTINCT GUN INTRODUCED BY THE PROSECUTION DURING THE APRIL, 1989 JURY TRIAL  
[SEE E.G. N.Y. PENAL LAW § 15.20 And Id. § 15.05]

30. New York Penal Law § 15.20(1)(2)(c)(d) provides that A Factual  
Mistake Can be predicated or, more specifically:

"FOUNDED UPON AN OFFICIAL STATEMENT OF THE LAW CONDITIONED IN (a) A  
STATUTE OR OTHER ENACTMENT, OR (b) AN ADMINISTRATIVE ORDER OR PERMISSION,  
OR (c) A JUDICIAL DECISION OF A STATE OR FEDERAL COURT, OR (d) AN  
INTERPRETATION OF THE STATUTE OR LAW RELATING TO THE OFFENSE,  
OFFICIALLY MADE OR ISSUED BY A PUBLIC SERVANT ...,"

[id., PL § 15.20(1)(2)(c)(d) (All-caps formats and underlines added)], and  
(i) the June 24, 1999 Federal Judicial Decision, memorandum and Order  
issued by a Article III Court in relevant parts found that Plaintiff  
Candelaria "HAS NEVER BEEN charged with possession of Two Weapon and that  
(ii) there were neither Expert nor lay witness or other evidence  
establishing or tending to establish the existence of a Second Weapon [see  
e.g. ¶ 15, sub-¶ "(a)," ante].

31. During the April, 1989 State Grand Jury Trial in the UCS, however,  
the prosecution claimed that in the evening of 11/9/87 Plaintiff Candelaria  
had Violated New York State Penal Law § 265.03 prohibiting possession of  
a loaded firearm with intent to use the same unlawfully against another  
under the theories that (a) in the evening of 11/9/87 Plaintiff candelaria  
unlawfully possessed one specific "COLT .38, like a two inch barrel,  
black color caliber revolver or "GUN" and that (b) Plaintiff Candelaria:

"[i] HAD AN ARGUMENT WITH THE OWNER OF THAT GAS STATION. [ii] THEY  
STRUGGLED AND THAT THE OWNER OF THAT GAS STATION, CESAR ARIAS, [iii]  
WAS ABLE TO GET THE GUN THAT THE DEFENDANT WAS HOLDING WAY FROM HIM. [iv]  
HE GAVE THE GUN TO HIS BROTHER VICTOR ARIAS, [v] WHO WAS A CORRECTION  
OFFICER, [vi] WHO TURNED IT IN TO THE POLICE,"

[Re-printed from Document # JC0059, Ls. 12-25 (underlines, materials in  
bracket marks and All-caps formats added)], and (c) during the SANDOVAL  
Hearing the Prosecution Office of the Kings Co. D.A. Made similar assertion.

32. N.Y. CPL § 70.20 provides that:

"NO CONVICTION OF AN OFFENSE BY VERDICT IS VALID UNLESS BASED UPON TRIAL EVIDENCE WHICH IS LEGALLY SUFFICIENT AND WHICH ESTABLISHES BEYOND A REASONABLE DOUBT EVERY ELEMENT OF SUCH OFFENSE AND DEFENDANT," COMMISSION THEREOF,"

[id., CPL § 70.20 (underlines and all-cps forms added)] and, in regarding thereof (a) CPL § 70.10(1) defines "LEGALLY SUFFICIENT EVIDENCE" as"

"MEANS COMPETENT EVIDENCE WHICH, IF ACCEPTED AS TRUE, WOULD ESTABLISH EVERY ELEMENT OF AN OFFENSE CHARGE AND THE DEFENDANT'S COMMISSION THEREOF,"

[id., CPL § 70.10(1)(underlines and all-cps forms added)]<sup>2</sup> and, during the April, 1989 State Petit Jury Trial Correction Officer aris Victor, Sh. # 9419" testified tht on 11/9/87 he recovered from his brother Cesar arias and turned over to the NYPD Benardo Blair one Speific "COLT .38, LIKE A TWO INCH BARREL, BLACK COLOR" caliber revolver which Plaintiff candelaria was or had aimed or attempt to Display at victor arias during an argument over exchange with or over a "Dollar" [see e.g. ¶ 19 and sub-¶¶ underspinning it, Ante], and Plaintiff candelaria's defense was that either Victor arias and his brother Cesar Arias fabricated the accusation against him because Plaintiff threatened to report their MONEY COUNTERFEIT OPERATION or that they were mistaken(i):

> "Q: MR. CANDELRIA, DID EITHER [a] VICTOR ARIAS OR [b] CESAR ARIAS EVER TAKE A GUN FROM YOU?

A: NEVER IN MY LIFE. I DID KNOW THEM, BUT NEVER, EVER HAD THEY TAKEN OFF A WEAPON.

>> BUT YES, I HAVE DONE BUSINESS WITH THEM, YES, BUT THAT IS NOT TRUE NOT TRUE WHAT THEY SAID,"

[re-printed from Pg. 378, Lines 20-25 through Pg. 379, Ls. 1-3 of the April, 1989 State Petit Jury Trial Transcript (materials in bracket marks,

33. The Court summarily denied Plaintiff's motion for an order of dismissal, [see Tr. 393]:

"Based upon the testimony in the record, the Court is of the opinion there are factual issues which have to be passed upon by the jury. The motion, therefore, is denied. The defense counsel has an exception,"

[Tr. 393, lines 1-25 (EMPHASIS ADDED)],

D: WHETHER THE CRIME OF HAVING IN POSSESSION IN THE EVENING OF 11/9/87- WITH INTENT TO USE THE SAME AGAINST VICTOR OR CESAR ARIAS IN VIOLATION OF N.Y.S. PENAL LAW § 265.03 (1987)-A NEWLY DISCOVERED SERIAL # 288659LW [JC0015] COLT .38 TWO INCH BARREL CALIBER "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419-ONE FOR WHICH N.Y.S. LAW AUTHORIZES ANY STATE COURT/JUDGE TO AWARD AN INFAMOUS PUNISHMENT UPON CONVICTION- AND-IF SO-HAS PLAINTIFF CANDELARIA BEEN CONVICTED AND UPON CONVICTION ANY INFAMOUS PUNISHMENT AWARDED OR IMPOSED UPON HIM THEREOF?

34. Newly Discovered Evidence for the first time obtained by Plaintiff Candelaria in October 23, 2007, Documented that in the evening of 11/9/87, Plaintiff Candelaria was charged with one Specific Serial # 288659LW Colt .38 Two Inch Barrel Caliber revolver Which was documented by the charging Officer as (a) a "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" [see e.g. Document # JC0012-JC0016 at JC0015] and (b) four Serial # 288659LW Colt .38 caliber Rounds or bullet [see e.g. Documents ## JC0012-JC0016], and additional Newly Discovered evidence obtained by Plaintiff in February, 2009, documented that (c):

"[i] ON 11/9/87, THE DEFENDANT WAS ALLEGEDLY IN POSSESSION OF A .38 CALIBER REVOLVER LOADED WITH FOUR LIFE ROUNDS"

[see e.g. Document # JC0085 (All-caps formats added)], and (d) during the April, 1989 State Grand Jury Trial the State Grand Jury Was Instructed that:

"[i] THEREFORE, WITH RESPECT TO COUNT TWO OF THE INDICTMENT, IF YOU FIND THE PEOPLE HAVE PROVED TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT EACH OF THESE FOUR ELEMENTS AS I HAVE JUST EXPLAINED THEM: FIRST, THAT ON OR ABOUT NOVEMBER 9, 1987, IN THE COUNTY OF KINGS, THE DEFENDANT POSSESSED A CERTAIN OBJECT, WHICH WAS INTRODUCED INTO EVIDENCE BY THE PEOPLE AS PEOPLE'S EXHIBIT; TWO, THAT WHAT THE DEFENDANT POSSESSED WAS, IN FACT, A LOADED FIREARM; THREE, THAT THE DEFENDANT KNOWINGLY POSSESSED A LOADED FIREARM AND, FOUR, THAT THE DEFENDANT POSSESSED A LOADED FIREARM WITH INTENT TO USE IT UNLAWFULLY AGAINST ANOTHER, YOU [ii] MAY FIND THE DEFENDANT GUILTY OF THE CRIME OF CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE,"

[recited from Pg. 492, Ls. 6-22 of the April, 11, 1989 State Trial Transcript (materials in bracket marks and All-caps formats and underlines added)].<sup>2</sup>

<sup>2</sup> Cf. Ex parte WILSON, 114 U.S. 417, at 422 & 426 ( 3/30/1885) and Re Claasen, 140 U.S. 200, at 205 and Paguate Habana, 175 U.S. 677, 682.



35. The Supersiding Indictment # 8897/88 [see e.g. Document # JC0040-41] actually charged Plaintiff candelaria with Five Count of Commission of Criminal activities and (a) "WITH RESPAECT TO COUNT THREE of the Indictment" the State court instructed the Grand Jury in April, 1989 tht it was incumbent upon the Prosecution City/ New York or "The People" to (b) To establish beyond a reasonable Doubt that (i):

"FIRST, THAT ON OR ABOUT NOVEMBER 9, 1987, IN THE COUNTY OF KINGS, THE DEFENDANT POSSESSED A CERTAIN OBJECT WHICH WAS INTRODUCED INTO EVIDENCE AS THE PEOPLE'S EXHIBIT; TWO, THAT WHAT THE DEFENDANT POSSESSED WAS, IN FACT, A FIREARM; THREE, THAT THE FIREARM WAS LOADED AT THE TIME THE DEFENDANT POSSESSED IT; FOUR, THAT THE DEFENDANT KNOWINGLY POSSESSED THE FIREARM; AND, FIVE, THAT THE DEFENDANT'S POSSESSION OF A LOADED FIREARM DID NOT TAKE PLACE IN HIS HOME OR PLACE OF BUSINESS, THEN [ii] YOU MAY FIND THE DEFENDANT GUILTY OF THE CRIME OF CRIMINAL POSSESSION OF A WEAPON IN THE THIRD DEGREE,"

[recited from Pg. 496, Ls. 5-22 of he April, 1989 State Petit Jury Trial Transcript (underlines, materials in bracket marks and all-caps formats added)].

36. New York CPL 1.20(16)(c) provides that (a):

"A CRIMINAL ACTION TERMINATES WITH THE IMPOSITION OF A SENTENCE OR SOME OTHER FINAL DISPOSITION IN A CRIMINAL COUART OF THE LAST ACCUSATORY INSTRUMENT FILED IN THE CASE,"

[id., CPL 1.20[16][c] ( All-caps formats added)] and (b) CPL 1.20(9) provides that the words and phrases "ARRAIGNMENT" means the occasion upon which:

"A DEFENDANT AGAINST WHOM AN ACCUSATORY INSTRUMENT HAS BEEN FILED APPEARS ABEFORE THE COURT IN WHICH THE CRIMINAL ACTION IS PENDING FOR PURPOSE OF HAVING SUCH COURT ACQUIRE AND EXERCISE CONTROL OVER HIS PERSON WITH RESPECT TO SUCH ACCUSATORY INSTRUMENT AND SETTING THE COURSE OF FURTHER PROCEEDINGS IN THE ACTION,"

[id., CPL 1.20(9)(all-caps formats added)], and (c) Arraignment "is an ELEMENTAL PRERQUISITE TO TRIAL READINESS." [<sup>2</sup>].

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<sup>2</sup> See e.g. An accused must be tried, convicted or acquitted for the offenses for which he had been charged, arraigned and indicted under new york law [see e.g. People v. Perez, 83 N.Y.2d 269, at 274 and People v. England, 84 N.Y.2d 1, 4 (N.Y. Ct. app. 1994)].

III--THE SPECIFIC WRONG COMPLAINING OF AND THE GRAVAMENS OF THE UNDERLYING CAUSES OF ACTION IS THAT THE NEWLY DISCOVERED SERIAL # 288659LW [JC0015] COLT .38 CALIBER REVOLVER IMPUTED TO PLAINTIFF CANDELARIA AS A "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" [JC0015] NEGATES PROBABLE-CAUSE AS OF JUNE 24, 1988 AND--IN THE ABSENCE OF FORENSIC EVIDENCE THAT IT WAS OPERABLE AND CAPABLE OF DISCHARGING ANY OF THE SEVEN ROUNDS INTRODUCED DURING THE APRIL, 1989 PETIT JURY TRIAL AS PEOPLE'S EXHIBIT 2B ON EVIDENCE--BRINGS THE PROSECUTOR WITHIN THE MEANING OF COMMON LAW FRAUD [DAVIS V. WAKELEE--156 U.S. 680, AT 689-690 (1895)] AND TRANSANCTINALLY IMMUNIZES PLAINTIFF CANDELARIA FROM BOTH CRIMINAL AND CIVIL LIABILITY AT N.Y.S.

37. Primarily, the principle of common law fraud provides :

"THAT WHEN A PARTY ASSERTS WHAT HE KNOWS IS FALSE, OR DOES NOT KNOW TO BE TRUE, TO ANOTHER'S LOSS, AND TO HIS OWN GAIN, HE IS GUILTY OF A FRAUD, A FRAUD IN FACT, IF HE KNOWS IT TO BE FALSE: A FRAUD IN LAW, IF HE DOES NOT KNOW IT TO BE TRUE,"

[<sup>2</sup>], and N.Y.S. CPL § 570.58, defines that:

"A PERSON BROUGHT INTO THIS STATE ON OR AFTER WAIVER OF EXTRADITION BASED ON A CRIMINAL CHARGE SHALL NOT BE SUBJECT TO SERVICE OF PERSONAL PROCESS IN CIVIL ACTION ARISING OUT OF THE SAME FACTS AS THE CRIMINAL PROCEEDING TO ANSWER \*\*\* UNTIL HE HAS BEEN CONVICTED IN THE CRIMINAL PROCEEDING, OR IF ACQUITTED, UNTIL HE HAS HAD REASONABLE OPPORTUNITY TO RETURN TO THE STATE FROM WHICH HE WAS EXTRADITED,"

[re-printed from N.Y.S. McKinney's CPL § 570.58 (2011) (underlines and all-caps formats added)], and CPL 570.12 of Article Five Hundred Seventy is known as "THE UNIFORM CRIMINAL EXTRADITION ACT," and CPL § 580.20 is known as the AGREEMENT ON DETAINERS, which requires a detainer to be formulated as mandated by the National INTERSTATE AGREEMENT ON DETAINER [ # JC0012-JC0026, at JC0015], documented that in the evening of 11/9/87 (a) Correction Officer arias Victor, SH. # 9419 and (b) his brother Cesar arias accused Plaintiff Candelaria of Possessing (i) a .38 Caliber revolver which (ii) NYPD Officer John Silva, SH. # 2671 documented as a Serial # 288659LW "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" [see e.g. Document JC0015]. <sup>2</sup>

<sup>2</sup> "THE [EXTRADITION] TREATY ONLY JUSTIFIED [DEFENDANT'S] DELIVERY ON THE GROUND THAT HE WAS PROED TO BE GUILTY OF MURDER ... IT DOES NOT FOLLOW AT ALL THAT SUCH MAGISTRATE WOULD HAVE DELIVERED HIM ON ... CRUEL AND UNUSUAL PUNISHMENT ... [A CHARGE] OF A VERY UNIMPORTANT CHRACTER WHEN COMPARED WITH THAT OF MURDER," said the Court in U.S. v. RAUCHER, 119 U.S. 407, at 432 (1886) (MATERIAL IN BRACKET ADDED)].

38. The undersigned is unaware of any decision by the Court of Appeals for the Second Circuit on the issue.

39. In July, 2001, a bill denominated S5110 was enacted, amending the “Son-of-Sam” Law, New York Exec. Law § 632-a, previously in effect in New York State, in the following ways:

- a. It expands the reach of the law from its prior jurisdiction over “profits from a crime” to include all “funds of a convicted person,” which is defined to mean “all funds and property received from any source by a person convicted of a crime or by the representative of such a person.” S5110, Ch. 62 Laws of 2001.
- b. It defines “convicted person” to include, *inter alia*,
  - i. inmates confined by DOCS, *Id.*, § 1(c)(i);
  - ii. persons on parole, conditional release, other forms of post-conviction supervised release, or otherwise subject to an undischarged sentence, *Id.*, § 1(c)(ii);
  - iii. persons who are no longer prisoners or on supervised release, but who have received funds “paid to such person as a result of any interest, right, right of action, asset, share, claim, recovery or benefit of any kind that the person obtained, or that accrued in favor of such person, prior to the expiration of such sentence, term or period, and includes any recovery or award collected in a lawsuit . . . where the right or cause of action accrued prior to the expiration or service of such sentence. . .” *Id.*, § 1(c)(iii); and
  - iv. persons who are no longer subject to any term of imprisonment or supervised release, but who were convicted of violent felonies, manslaughter in the second

degree, criminally negligent homicide, or a sex offense, and whose term of incarceration or supervised release has ended within the past ten years. *Id.*, § 1(c)(iv).

c. It requires every entity that knowingly contracts for, pays or agrees to pay any funds of a convicted person in excess of \$10,000, to notify the Crime Victims Board of the payment “as soon as practicable,” under penalty of a fine treble the amount of the funds for failure to so report. *Id.*, § 2(a)(ii) and 7(b)(i).

d. It requires the Crime Victims Board to notify all known crime victims (or their representatives) of the existence of funds of a convicted person *Id.*, § 2(b), and it extends all applicable statutes of limitations governing actions by crime victims for money damages from persons convicted of the crimes of which they are victims for three years from the date of discovery of any funds of a convicted person as defined in the bill. *Id.*, § 3.

e. It permits the Crime Victims Board to attach or apply for other provisional remedies against the funds of a convicted person upon receipt of notice that the crime victim intends to file a civil action for damages. (The Crime Victims Board previously had the authority to apply for provisional remedies only upon receipt of notification that a victim had commenced such an action.)

f. S5110 also amends New York Civil Practice Law and Rules § 5205 by adding a new subdivision, (k), which provides, *inter alia*:

notwithstanding any other provision of law to the contrary, where the judgment involves funds of a convicted person as defined in paragraph (c) of subdivision one of section six hundred thirty-two-a of the executive law, and all or a portion of such funds represent compensatory damages awarded by judgment to a convicted person in a separate action, a judgment obtained pursuant to such section six hundred thirty-two-a shall not be subject to execution or



enforcement against the first ten percent of the portion of such funds that represents compensatory damages in the convicted person's action; provided, however, that this exemption from execution or enforcement shall not apply to judgments obtained by a convicted person prior to the effective date of the chapter of the laws of two thousand one which added this sentence or to any amendment to such judgment where such amendment was obtained on or after the effective date of this subdivision.

40. The 2001 amendments to the "Son of Sam" Law were enacted after DAVID McCLARY, who was serving a sentence of life imprisonment for the murder of New York City Police Officer Edward Byrne was awarded a jury verdict of \$660,000.00 for violation of his constitutional rights by employees of the New York State Department of Correctional Services. *McClary v. Coughlin*, 87 F. Supp. 2d 205, 207 (WDNY 2000); the award was remitted to \$237,500.00 *Id.* at 220; and the reduced judgment was affirmed on appeal by the Court of Appeals for the Second Circuit. *McClary v. Kelly*, 237 F.3d 185 (2d Cir. 2001).

41. S5110's legislative sponsors explicitly described McCLARY's federal court judgment as one of the major inspirations for the bill.

42. The Sponsor's Memo for S5110, contains the following language:

These shortcomings of the Son of Sam law are best illustrated in the case of David McClary. McClary, who is serving a term of 25 to life in prison for killing New York City Police Officer Edward Byrne in 1988, recently received a \$660,000 federal jury award (subsequently found to be excessive and reduced to \$237,500 on remittitur) for the "mental stress" of being placed in administrative segregation while in prison. Aside from the fact that DOCS kept McClary from general population for his own protection, the unfortunate consequence was the award could not be used to compensate the family of Officer Byrne because the applicable limitations period had expired and the funds were not "profits of the crime" within the existing "Son of Sam" law.

Sponsor's Memorandum, p. 9.

i. The Entanglement Factor Between Det. Vasaturo And The Kings CO. D.A.:

43. Besides the Informations REPRINTED IN ¶ 6, ANTE, document # JC0033, additionally recorded and an (a) SILVER GUN" shooting at the victim [id., at JC0032] and OFFICE OF THE KINGS COUNTY DISTRICT ATTORNEY, "HOMICIDE BUREAU INFORMATION SHEET," dated 6/24/88, underspinning the investigation of "D.A. HOM. # 9424," specifically documented that, as documented:

"FACTS:

DEFENDANTS AND VICTIM GOT INTO AN ARGUMENT IN AN AFTER HOURS CLUB. DEFENDANT LEFT THE CLUB AFTER THE ARGUMENT. WHEN VICTIM LEFT THE CLUB AND WAS GETTING INTO HIS CAR, DEFENDANT SHOT THE VICTIM TWO TIMES.

PROPERTY RECOVERED: .38 CALIBER REVOLVER.

VOUCHER # D12747, 90TH PCT., BY P.O. JOHN SILVA, SHIELD # 2671, 61 # 12280. (ON 11/9/87, AT 7:35 P.M. THE DEFENDANT WAS OBSERVED IN POSSESSION OF THIS GUN. THE GUN WAS TAKEN AWAY FROM DEFENDANT BY AN OFF-DUTY CORRECTIONS OFFICER, WHO BROUGHT THE GUN TO THE 90TH PCT.).

NOTE:

I AM INFORMED BY DET. VASATURO THAT A BALLISTICS LAB ANALYSIS WAS DONE BY DET. ALBANESE OF THE BALLISTICS SQUAD.

RESULTS OF ANALYSIS: THE BULLET RECOVERED FROM THE VICTIM'S BODY CAME FROM THE DEFENDANT'S .38 CALIBER REVOLVER.

ACTION TAKEN:

DRAFTED COMPLAINT. COMPLAINT AND WARRANT AUTHORIZED BY JON BESUNDER,"

[quoted from Document Bearing Date-stamp # JC0033 (underlines and All-caps formats added)] and, in regarding thereof, (b):

"NO DISTINCTION CAN BE TAKEN BETWEEN THE GOVERNMENT AS PROSECUTOR AND THE GOVERNMENT AS JUDGE. IF THE EXISTING CODE DOES NOT PERMIT DISTRICT ATTORNEYS TO HAVE A HAND IN SUCH DIRTY BUSINESS IT DOES NOT PERMIT THE JUDGE TO ALLOW SUCH INQUITIES TO PROCEED,"

had said the Honorable Mr. Justice Holmes in his dissenting in OLMSTEAD v. U.S., 277 U.S. 438 (1928) (All-caps formats added)] and, (c) a Priori,

"The arresting Officer was not himself possessed of any factual data tending to corroborate the informant's tip that [the underlying victim had been shot and killed with the Serial # 288659LW P.O. John Silva had Vouchered on 11/9/87, under Voucher D12747],"

[see e.g. People v. Jennings, 54 N.Y.2d 518, at 523 (N.Y. Ct. App. 1981) (quoting Whiteley v. Warden, 401 U.S. 560, at 568 (emphasis added)], when evidence already on record [see e.g. Tr. 349-362] establishes that as of June 24, 1988, the latter, the state was fully aware that the Serial # 288659LW [ JC0015, JC0033]

"GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. 9419," P.O. John Silva, SH. # 2671, had Vouchered on 11/9/87, under Voucher D12747, had not been the caused of the underlying victim Pedro Rodriguez's death on 11/9/87.

A consent cannot justify the unlawful arrest [Bumper, 391 U.S. at 549].

g: The Prosecution Knew of the Existence of UF-61 Complaint # 12, 280 [JC0012] And Of Arrest Report # K87067769 [JC0013] But Did Consciously Disregard The Risk That The Gun Underspinning Said UF-61 Complaint # 12, 280 And Said Arrest Report # K87067769 Was Not The "GUN USED IN THE MURDER" Of Pedro Rodriguez

44. The Presiding A.D.A. David Neier, on behalf of the STATE OF NEW YORK, Manded that "THE NEW YORK CITY POLICE DEPARTMENT," Produce on "3/13/89," [see e.g. Document Bearing Bate-Stamp # JC0044—for the first time turned over on 10/23/07], (a) "UF-61, COMPLAINT NUMBER: 12, 280, date 11/9/87, time 1935," (b) "Arrest Number: [K87 0]67769, from the NYPD Nine O Precinct or "90" Precinct under the theory that (c) the COLT .38 Caliber revolver or "GUN" underspinning said UF-61 Complaint # 12, 280 and Said Arrest Report # "67769 [cf. JC0012- ] had been presumptively "USED IN MURDER," and the place of the Murder or occurrence is identified as "4 Grand Street" [see e.g. Document # JC0044] for the first time turned over to plaintiff's defense Team on 10/23/07 [see e.g. Document Bearing Bate-Stamp ## JC0001-JC0011] among 111 Sheets of Documents, which included 19- "SUBPOENAS" [see e.g. Document # JC0005—JC0008], whereas (i) UF-61 Complaint # 12, 280 [see JC0012] made CROSS-REFERENCE to NYPD "VOUCHER D12746, D12747, and D12748, and (ii) Arrest Report # K87067769 ("67769") made CROSS REFERENCE to UF-61 Complaint # 12, 280, and to NYPD Voucher ## D12746, D12747, and D12748 [see e.g. Document Bearing Bate-Stamp # JC0013], and finally (d) among the 111 Sheets of Document the Office of the Kings Co. D.A. on 10/23/07, for the first time included (i) NYPD PROPERTY CLERK'S INVOICE # D12747, which imputed to Plaintiff Candelaria ownership POSSESSION OF ONE SPECIFIC SERIAL # 288659LW COLT .38, TWO INCH BARREL, CAL. REVOLVER which was Documented by NYPD Officer John Silva, SH. # 2671 as One specific "GUN RECOVERED BY CORRECTION OFFICER ARIS VICTOR, SH. # 9419" executed on 11/9/87 [see e.g. Document # JC0015], and (ii) four Serial # 288659LW Rounds.

44. "COPY OF STATE OF FLORIDA WAIVER OF EXTRADITION, ARRAIGNMENT CARD, CENTRAL BOOKING PRISONER'S PROPERTY FORM, STATEMENT OF READINESS FOR TRIAL, ARREST WARRANT SUPPORTING AFFIDAVIT, BENCH WARRANT, TELEPHONE DISPATCH LOG FOR 11/9/87, DEFICTIE INDIVIDUAL CASE LONG COULD NOT BE LOCATED,"

[accords-Reprinted from document Bearing bate-stamp # JC0009 (All-caps format

added)] "ON THURSDAY, JUNE 30, 1988, THE UNDERSIGNED [DET. VASATURO] PERSONALLY WENT TO 49 CHAMBER AT (WARRANT DIVISION) TO FILE AN ARREST WARRANT ON JUAN CANDELARIA WANTED FOR THE HOMICIDE OF PEDRO RODRIGUEZ ON 11/9/87. [i] THE UNDERSIGNED SPOKE TO SGT. ZULBERTI WHO INFORMED ME THAT THIS WARRANT IS FILED UNDER WARRANT # E8820021. [ii] A TELETYPE MESSAGE WAS SENT TO DET. MORRISON, METRO DADE MIAMI P.D. INFORMING HER OF THIS WARRANT,"

[re-printed from Document Bearing Bate-Stamp # JC0035 (underlines, materials in bracket marks and All-caps formats added)], whereas (b):Plaintiff candelaria's arrest in the State of Florida for presumptive possession of the Newly Discovered Serial # 288659LW Colt .38 Two Inch Barrel, Colt "GUN RECOVERED BY CORRECTION OFFICER ARIS VICTOR, SH. # 9419, which was prior to October 23, 2007, known as Plaintiff's ".38 Calier Revolver" [see e.g. Plaintiff's attached Condition to the waiver of extradition agreement dated July10, 1988 July 10, 1988], was documented by the Office of the Kings Co. D.A. as, in its own words and phrases:

" "A A GRAND JURY PRESENTATION IS SCHEDULED FOR TUESDAY, JULY 12, 1988, AT 10 A.M.  
NOTIFICATION HAE BEEN ENTERED FOR DET. VASATURO AND P.O. BAKER P.O. BAKER OF THE 83rd PRECINCT.  
THE DEFENDANT, JUAN CANDELARIAS, IS PRESENTLY IN THE CUSTODY OF FLORIDA STATE AUTHORITIES WHERE HE IS BEING HELD ON A GUN POSSESSION,"

[accords or re-printed from document Bearing Bate-stamp # JC0037, JC0036, at JC0036 (underlines and All-caps formats added)], and finally (c), Document Bearing Bate-stamp # JC0037 documented that:

1. ON SUNDAY, SEPTEMBER 4, 1988, THE UNDERSIGNED [DET. VASATURO], IN COMPANY OF DET. MCKEON 83 SQUAD ARRESTED THE ABOVE AT 120 SCHERMERHORN'S STREET.
2. IN VIEW OF THE ABOVE FACTS AND AFTER CONFERRING WITH THE BELOW SUPERVISOR RECOMMENDED CASE CLOSED,"

[re-printed from Document # JC0037 ( (materials in bracket marks and all-caps formats added))].



h: In Light of What NYC Medical Examiner Juaquin Gutierrez And NYPD Ballistician Det. Michael albanese Knew Prior To June 24, 1988, What Is The Available Remedy, In Law Or Equity, In the Absence Of Forensic Evidence That The Newly discoverede Serial # 288659LW [JC0015] "GUN RECOVERED BY CORRECTION OFFICER ARIAS Victor, SH. # 9419" Had Fired The Bullet Which Had Caused The Death of Pedro Rodriguez?

46. N.Y.S. Common Law recognizes that:

"IF THERE WAS NO LEGAL POWER TO RENDER THE JUDGMENT OR DECREE, OR ISSUE THE PROCESS, THERE WAS NO COMPETENT COURT, AND CONSEQUENTLY NO JUDGMENT OR PROCESS. ALL IS CORAM NON JUDICE AND VOID,"

[<sup>2</sup>], and (a) that:

"VOID PROCESS IS SUCH AS THE COURT HAS NO POWER TO AWARD, OR HAS NOT ACQUIRED JURISDICTION TO ISSUE IN THE PARTICULAR CASE, OR WHICH DOES NOT, IN SOME MATERIAL RESPECT, COMPLY IN FORM WITH THE LEGAL REQUISITES OF SUCH PROCESS, OR WHICH LOSES ITS VITALITY IN CONSEQUENCE OF NON-COMPLIANCE WITH A CONDITION SUBSEQUENT, OBEDIENCE TO WHICH IS RENDERED ESSENTIAL,"

[<sup>2</sup>], and (b):

"AFTER THE FACT JUDICIAL PARTICIPATION CANNOT VALIDATE AN UNLAWFUL ARREST; ONLY PROBABLE CAUSE EXISTING AT THE TIME OF ARREST WILL VALIDATE THE ARREST AND RELIEVE THE DEFENDANT OF LIABILITY,"

[\*].; consequently, in the absence of forensic proof beyond a Reasonable Doubt that the newly Discovered Serial # 288659LW Colt .38, Two Inch Barrel, Caliber revolver imputed to Plaintiff candelaria as a "GUN RECOVERED BY CORRECTION OFFICER ARIS VICTOR, SH. # 9419" [JC0015] on 11/9/87 UNDER NYPD PROPERTY CLERK'S INVOICE # D12747" was capable of Discharging any of the Seven rounds Introduced by the Prosecution during the april, 1989 State Jury Trial, over Plaintiff's objection, as People's Exhibit 2B on evidence, neither (c) Plaintiff's arrest in Miami, Florida, nor his (d) waiver of extradition to New York or the consent to extradition was authorized by state or federal Law. \*

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<sup>2</sup> Quoted from People ex rel. Tweed v. Liscomb-60 N.Y. 559, at 570 (N.Y. Ct. App. 1875); <sup>3</sup> Re-printed from Fischer v. Lanbein, 103 N.Y. 84, at 90, 8 N.E. 251 (N.Y. Ct. app. 1886). \* See Broughton v. N.Y.S., 37 N.Y.2d 451, at 458, 335 N.E.2d 310 (N.Y. Ct. app. 1975).

47. New York State's Common Law recognizes that, in pertinent parts, (a):

"SECTION 12 OF ARTICLE I OF THE NEW YORK STATE CONSTITUTION CONFORMS WITH THE FOURTH AMEND REGARDING THE PROSCRIPTION AGAINST UNREASONABLE SEARCHES AND SEIZURES, AND THIS IDENTITY OF LANGUAGE SUPPORTS A POLICY OF UNIFORMITY IN BOTH STATE AND FEDERAL COURTS,"

[<sup>2</sup>], (b) that:

"ALTHOUGH THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION ONLY APPLIES TO THE UNITED STATES COURTS, WE MUST ASSUME THAT THE WORD INDICTMENT IN THE FEDERAL CONSTITUTION HAS THE SAME MEANING AS THE SAME WORD IN THE STATE CONSTITUTION,"

[<sup>3</sup>], and finally that (c):

"THE LANGUAGE OF THE FIFTH AMENDMENT OF THE FEDERAL CONSTITUTION IS THE SAME AS THE WORDS IN ARTICLE 1, § 6, OF THE NEW YORK CONSTITUTION: NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL OR OTHERWISE INFAMOUS CRIME, \*\*\* UNLESS ON PRESENTMENT OR INDICTMENT OF A GRAND JURY,"

[E].

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<sup>2</sup> Quoted from People v. Ponder, 54 N.Y.2d 160, at 165, 429 N.E.2d 735, 445 N.Y.S.2d 57 and People v. Bigelow, 66 N.Y.2d 417, at 422-423 (N.Y. Ct. App. 1985)(underlines and All-caps formats added)].

<sup>3</sup> Quoted from People v. Boagdanoff, 254 N.Y. 16, at 34, 171 N.E. 890 (N.Y. Ct. app. 1930), accords People v. Perez, 83 N.Y.2d 269, 274, 631 N.E.2d 570 (N.Y. Ct. App. 1994) (underlines and all-caps formats added).

E Quoted from People ex rel. Battista v. Christian, 249 N.Y. 314, at 317-320, at 320 (1928)(citations omitted). CPL § 200.10 defines "Indictment." In People v. Grega, 72 N.Y.2d 489, 531 N.E.2d 279 (N.Y. Ct. app. 1988) the Court outlined the purpose of Indictment, and CPL 200.30 prohibits Duplicious Counts. The U.S. Supreme Court has taken notice of the fact that :

"NEW YORK RETIFIED WITH A PROPOSAL OF NUMEROUS AMENDMENTS AND A DECLARATION OF RIGHTS WHICH THE CONVENTIN DECLARED COULD NOT BE VIOLATED AND WERE CONSISTENT WITH THE CONSTITUTION. ONE OF THESE RIGHTS WAS THAT "NO PERSON OUGHT TO BE TAKEN, IMPRISONED OR DEPRIED OF HIS FREEHOLD, OR BE EXILED OR DEPRIVED OF HIS PRIVILEGES, FRANCHISES, LIFE, LIBERTY, OR PROPERTY BUT BY DUE PROCESS OF LAW,"

[accords, Twining v. New Jersey, 211 U.S. 78, at 109-111, at 109 (1908)(All-Caps Formats added)].. N.Y. CPL 260.10 also provides that "EXCEPT AS OTHERWISE PROIDES IN SECTION 320.10, EVERY TRIAL OF AN INDICTMENT MUST BE BY A JURY TRIAL" [id., CPL 260.10][cf. Baldwin v. N.Y., 399 U.S. 66 (1970)] (Sixth and 14th amends. right to a Jury trial when penalty is imprisonment for six months or more)]. Had Plaintiff been Tried for Using A Serial # 288659LW Colt .38 Two Inch Barrel [JC0015] "GUN ... And its Possession [see JC0015, JC0033]?"

48. "PROSECUTIONS MUST BE CONDUCTED IN SUBSTANCES AND WITHOUT ESSENTIAL CHANGE AS THE CONSTITUTION COMANDS [AND] A CONVICTION OTHERWISE OBTAINED IS A NULLITY,"

[accords, People ex rel. Battista v. Christian, 249 N.Y. 314, at 319-320, 164 n.E.2d 111 (1928) (materials in bracket marks and all-caps formats added)], under the Federal Law and Conastitution of the United States:

"IT IS AS MUCH A VIOLATION OF DUE PROCESS TO SEND AN ACCUSED TO PRISON FOLLOWING CONVICTION OF A CHARGE ON WHICH HE WAS NEVER TRIED AS IT WOULD BE TO CONVICT HIM UPON  
MADE,"

[quoted from Cole v. State of Arkansa, 33 U.S. 196, at 201-202 (1948)] and

"ALTHOUGH THERE IS A FACTUAL DIFFERENCE BETWEEN THESE TWO SITUATIONS, THEY ARE THE SAME IN CRITICAL PART. IN EACH CASE, POLICE INSTRUDED UPON PROTECTED FOURTH AMENDMENT INTEREST UNDER THE PURPORTED AUTHORITY OF A WARRANT WHICH IS SUBSEQUENTLY REVEALED TO HAVE BEEN FURNISHED, AT THE TIME OF THE INSTRUCTION, NO JUSTIFICATION FOR SUCH POLICE CONDUCT,"

[id., 54 N.Y.2d at 523, 430 N.E.2d 1282, 446 N.Y.S.2d 229, at 231 (citations omitted and All-caps Formats and underlines added)],

under n.Y.S. Law (a):

"AFTER THE FACT JUDICIAL PARTICIPATION CANNOT VALIDATE AN UNLAWFUL ARREST: ONLY PROBABLE CAUSE EXISTING AT THE TIME OF ARREST WILL VALIDATE THE ARREST AND RELIEVE THE DEFENDANT OF LIABILITY,"

[accords, Broughton v. State of New York, 37 N.Y.2d 451, at 458, 335 N.E.2d 310, 373 N.Y.S.2d 87 (N.Y. Ct. App. 1975) (underlines and all-caps formats added)] and, with respect to any potential remedy underspinning an UNLAWFUL ARREST and DETENTION without probable cause and without expectation of ever obtaining a conviction against an actually innocent citizen of the united States who has been held for over twenty years without a conviction or sentence underspinning the underlying accusation, as newly discovered evidence being proffered herein as Documents number JC0012-26, compare with JC0037- 27-JC0037 now reveal], (b):

"THE PLAINTIFF IS ENTITLED TO COMPENSATION FOR LOSS TIME, FOR PHYSICAL DISCONFORT OR INCONVENIENCE, AND FOR ANY RESULTING PHYSICAL ILLNESS OR INJURY TO HEALTH,"

[accords, JAEGLY V. Coughlin, 439 F.3d 149, at 154 (2d Cir. 2006)]].

49. Between his admission to the DOCS on 12/26/89 and 1997, Plaintiff Candelaria was denied medical care Attention and; consequently, in 1997, Plaintiff Candelaria was allowed to develop End-Stage renal Disease ("ESRD") and was connected to a Hemodialysis/Peritoneal Dialysis machine and, indeed:

"BETWEEN 1997 AND 2007, MR. CANDELARIA WAS HOSPITALIZED MORE THAN 25 TIMES. (SEE TABLE.) NO LESS THAN 20 OF THESE ADMISSIONS WERE FOR ACCESS FOR DIALYSIS. HE RECEIVED A DECEASED DONOR RENAL TRANSPLANT IN OCTOBER 2005. HIS RECORDS INDICATE THAT HE HAS NO LARGE VEINS AVAILABLE IN HIS UPPER EXTREMITIES FOR FUTURE HEMODIALYSIS ACCESS AND THAT HE HAS FAILED PERITONEAL DIALYSIS. GIVEN THAT THE LIFE EXPECTANCY OF A DECEASED DONOR RENAL TRANSPLANT IS 10-15 YEARS, MR. CANDELARIA WOULD BE EXPECTED TO REQUIRE DIALYSIS AGAIN BY 2020. HIS PHYSICIANS' ABILITY TO MAINTAIN HIM ON DIALYSIS WILL BE SEVERELY LIMITED DUE TO THE LOSS OF MULTIPLE ACCESS POINTS PRIOR TO HIS KIDNEY TRANSPLANT,"

on October 11, 2005 [reprinted from the 2/2/09 EXPERT REPORT FILED BY DR. JEFFREY SILBERZWEIG, M.D., 165 Delhi Road, Scarsdale, N.Y. 10583, Telephone # (914) 484-3022, filed with a Federal Court in a Civil Right Action entitled Candelaria v. St. Agnes Hospital, 1: 01-CV-08594-LTS-RLE (SDNY), copy of which is affixed herewith as Document Bearing Date-Stamp # JC00 JC00 (All-caps Formats added)][compare, Anderson v. Rochester-Genesee Reg'l Transp. Auth., 337 F.3d 201, at 205, n. 4 (2d Cir. 2003) (TAKING JUDICIAL NOTICE OF RELATED DISTRICT COURT DECISION) and Conopco, Inc. v. Roll Int'l., 231 F.3d 82, at 86 n. 3 (2d Cir. 2000) (TAKING JUDICIAL NOTICE OF CALIFORNIA STATE COURT DECISION)], and there is no valid reason why this Honorable Court shall not take JUDICIAL NOTICE OF THE EXPERT REPORT OF DR. JEFFREY SILBERZWEIG, M.D., which had been filed in a sister USDC, SDNY, underspinning Plaintiff Candelaria and involving the same KIDNEY treatment [or Lack thereof], in light of Plaintiff's PRO SE status and lack of wherewithal to employ an expert in this action [cf. Erickson v. Pardus, 127 S.Ct. 2197, at 2199-2200 (2007) ("Erickson")].



IV--THE SPECIFIC WRONG COMPLAINING OF AND THE GRAVAMENS OF THE UNDERLYING CAUSES OF ACTION FOR INVOLUNTARY SERVITUDES--PROSECUTORIAL BAD FAITH--WRONGFUL IMPRISONMENT--AND CRUEL AND UNUSUAL PUNISHMENT--IS THAT THE DEADLY WEAPON UNDERSPINNING COUNTS TWO THROUGH FIVE OF THE SUPERSIDING INDICTMENT # 8897/88 CANNOT BE READ--UNDER THE PRINCIPLE OF EQUITY-- TO BE DIFFERENT OR DISTINCT THATN THE NEWLY DISCOVEREDE SERIAL # 288659LW COLT .38 UNCAPABLE OF DISCHARGING LIVE AMMUNITION CALIBER REVOLVER [JC0015, JC0033] IMPUTED TO PLAINTIFF CANDELARIA AS A "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH # 9419" [JC0015] UNDER NYPD PROPERTY CLERK S INVOICE # D12747 WHICH SUBSEQUENTLY RESULTED IN THE ORIGINAL INDICTMENT # 9954/87 [JC0012-JC0018]

50. Supersiding Indictment # 8897/88, voted in Plaintiff's absence following his 9/4/88 extradition to New York, charged Plaintiff with FIVE COUNTS of Infamous Or Serious Crimes [see e g Document ## JC0040-JC0041] and, in regarding to the "SCHEME" of said indictment, the presiding Judge Lombardo, in open court, conceded that A:

- a. " This indictment contains five counts. Unless I'm mistaken, the scheme of the [8897/88] indictment refers to two incidents.
- b. Count Two refers to the count of intentional murder.
- c. Count Two refers to the criminal possession of a weapon in the second degree, again referring to this murder.
- d. Count Three refers to a weapon in the third degree, again referring to that murder.
- e. Now, it won't make any sense in the indictment if Count Four and Five relate to the same count I have just related. I'm assuming that Count Four has to do with the separate incident where the gun [same gun] was draw and not used, and criminal possession of Three refers to the same incident,"

[taken from the April, 1989 State Trial Transcript containing a pre-jury instruction conference informing plaintiff for the first time as to the scheme of the suppersiding indictment 8897/88, at pp. 396-397 (emphasis and in bracket marks added)] and,

"UNLESS THE IDENTICAL CHARGE AGAINST THE DEFENDANT CONTAINED IN THE INDICATMENT WAS ESTABLISHED, BEYOND A REASONABLE DOUBT, HE SHOULD BE ACQUITTED, THOUGH THE EVIDENCE IN THE CASE MIGHT SHOW, OR TEND TO SHOW, SOME OTHER VIOLATION BY HIM OF THE LAW, AND THAT THE FACTS AND CIRCUMSTANCES ADDUCED WERE TO BE CONSIDERED ONLY TO PROVE THE MAIN FACT CHARGED,"

[accords, People v. McKane, 143 N.Y. 455, at 476, 38 N.E. 959

(N.Y. Ct. app. 1894), accords, People v. Perez, 83 N.Y.2d 269, at 274

(All-Caps Formats added)]. Had Petitioner Candelaria been Tried, Convicted, Sentenced or Acquitted of the Offenses/charges for which Plaintiff or Petitioner candelaria been indicted?